



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NIGHT AND DAY BUILDING MAINT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51(2) of the Act.

The hearing was conducted via teleconference. The Applicant, EF, attended the hearing at the appointed date and time and provided affirmed testimony. The Respondent did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicant and I were the only ones who had called into this teleconference. The Applicant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Applicant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Applicant testified that she was not recording this dispute resolution hearing.

The Applicant testified that she served the Respondent with the Notice of Dispute Resolution Proceeding package on October 22, 2021 by Canada Post registered mail (the "NoDRP package"). The Applicant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Respondent was deemed served with the NoDRP package five days after mailing them on October 27, 2021 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

Is the Applicant entitled to compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant confirmed that this tenancy began on January 1, 2017. Monthly rent was \$1,700.00. At first the Applicant resided in the basement suite, then later she moved upstairs.

The Four Months' Notice to End Tenancy For Demolition of the Rental Unit (the "Four Months' Notice") was personally served on the Applicant in December 2020. The effective date of the Four Months' Notice was March 30, 2021. The Applicant did not dispute the Four Months' Notice, and moved out of the rental unit on February 28, 2021.

The Applicant stated that her roommate went to look for mail that may have been sent to their old address, and when the roommate got to the home, they noted that there was a For Sale sign in the front of the home. The Applicant emailed the Respondent asking:

September 15, 2021

... I understand that you have all the right to act accordingly with your possession as you wish.

Being a good and peaceful tenant ever since, as per the purpose of Notice to end Tenancy, we believed that you di it with true and good intention. But upon learning, the premises at [address of rental unit] was not demolished. At one time when we are in the area, we seen a "FOR SALE" sign. And not longer enough, it was hang down and we seen its only painted and fenced. I just wanted to tell you, without hesitation, to depart in good faith, we comply to end the tenancy and to vacate even, earlier within the allotted time.

....

Anyway, I email because I want to know the reason why the house is still up, and I guess its occupied. Your immediate response will be appreciated.

The Respondent replied:

Hi [Applicant]

We actually had the plans at the city and were planning on demolishing the house once we received our permits. While we were waiting, we got an offer on the house so we sold it with the plan. Once we received the permit, we had it transferred to the new owners but I guess they decided not to go ahead with the build.

Sorry for the inconvenience.

*[Respondent]/[Company name]
[Telephone numbers]*

The Applicant stated that the home sold right away. Her roommate saw the For Sale sign, then in March, the sign was gone. The Applicant went to look at the home in March or April 2021, and the house was painted and someone was living there.

The Applicant is seeking tenant's compensation pursuant to Section 51(2) of the Act, which is compensation in the amount of 12 times the monthly rent payable under the tenancy agreement for a total amount of \$20,400.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application; however, in some situations the arbitrator may determine the onus of proof is on the other party.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Respondent's absence, therefore, all the Applicant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution

hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Respondent ended the tenancy with the Applicant for demolition of the residential property. It appears that the Respondent did not have all the necessary permits and approvals that are required prior to giving the Applicant the Four Months' Notice. The Applicant did not dispute the Respondent's Four Months' Notice, and vacated on the good faith that the Respondent intended to do what they said they were going to do.

RTB Policy Guideline #2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use states that:

C. DEMOLITION

Section 49(6)(a) of the RTA allows a landlord to end a tenancy to demolish a rental unit. Demolition means the complete and irreversible destruction of the rental unit. Usually, but not always, this involves the destruction of the building containing the rental unit. This may also involve partial demolition of a building so that the rental unit ceases to exist.

...

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose for at least 6 months under sections 49(6)(c) to (f). (emphasis mine)

Under sections 51(3) or 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I find that the Respondent has the onus to demonstrate that they planned to demolish the residential property and that they had no dishonest motive. The Respondent did not attend this hearing although served with the application and notice of hearing.

Section 51(2) and (3) of the Act state:

Tenant's compensation: section 49 notice

51 ...

- (2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that*
 - (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
 - (b) *the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*
- (3) *The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from*
 - (a) *accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and*
 - (b) *using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

The tenancy ended on February 28, 2021. The Respondent, by his own admission via email, sold the residential property rather than demolishing it. I find that the stated purpose for ending the tenancy did not occur.

RTB Policy Guideline **#50: Compensation for Ending a Tenancy** discusses the requirements for a landlord to pay compensation to a tenant under the Act when:

...

- *a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given;*

...

I find the Respondent failed to do the stated purpose he noted in his Four Months' Notice for ending the tenancy. The Respondent did not attend this hearing to provide evidence about possible extenuating circumstances that stopped the Respondent from accomplishing the stated purpose pursuant to Section 51(3) of the Act. I find the Respondent is not excused from paying compensation to the Applicant specified under Section 51(2) of the Act.

The Applicant is entitled to compensation in the amount of \$20,400.00 pursuant to Section 51(2) of the Act. The Applicant's total Monetary Award is determined to be \$20,400.00.

Conclusion

I grant a Monetary Order to the Applicant in the amount of \$20,400.00. The Respondent must be served with this Order as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 20, 2022

Residential Tenancy Branch