



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), issued on February 21, 2021.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the tenant entitled to compensation that is the equivalent of 12 times the monthly rent?

Background and Evidence

The tenancy began approximately 20 years earlier. Rent in the amount of \$625.00 was payable on the first day of each month. The parties agreed that the property was sold in October 2020, and the purchaser became the new landlord and the tenancy continued.

The tenant testified that they moved out of the rental unit on April 1, 2021, after receiving the Two Month Notice, pursuant to section 49 of the Act, with an effective date of May 1, 2021. The Tenant provided a copy of the Two Month Notice in evidence.

The reason for ending the tenancy within the Two Month Notice is:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☒ The father or mother of the landlord or landlord's spouse

The tenant testified that they rented a cabin that was within a campground. The tenant stated that the parents of the landlord did not occupy the rental unit and it was never occupied by any family member and then it was demolished and converted into three RV sites.

The landlord testified that they did issue the Notice to the tenant; however, the tenant was informed at that time it was served that it would be their son living in the premises. The landlord stated that there was not a place on the Two Month Notice to indicate that it was for their son.

The landlord testified that the rental unit is a small cabin, and the intent was for their son to live there. However, after the tenant vacated they discovered the cabin was in horrible condition.

The landlord testified that there were rodent, termites, ants and black mould in the rental unit. The landlord stated on further inspection the walls were rotting and there issues with the foundation. The landlord stated that the cabin was between 80 and 100 years old. The landlord stated because they found the premises to be unfit for living and they used if for storage and for painting things like doors.

The landlord testified that the repairs to fix the cabin were too high and it was more cost effective to demolish the rental unit which they did on November 5, 2021. The landlord stated they then converted the site of the cabin to one RV site not three, for a place their child can eventually put a trailer on, which they are currently saving the money to do so. The landlord stated there was no financial gain.

The tenant argued that the cabin was not unlivable. The tenant stated that the landlord had been in the cabin on a few occasions. The tenant stated that the rental unit was very old, and the landlord could have had it inspected.

The landlord argued when they purchased the property they were not allowed an inspection.

The landlord has filed multiple letters as evidence, I have reproduced only what I have determined to be relevant .

The statement of EB, dated June 11, 2022, in part reads,

“The cabin in question where {tenant} resided **was in terrible condition** and I’m not a professional but from what I saw, no one should have been living in it. ..it **looked like it was in need of major repairs, like the rest of the property...** The 11 years Ive resided here I never say anything done to the cabin or anything else, ...”

[Reproduced as written]

The statement of NH and LH, dated June 8, 2022, in part reads,

“this cabin/tiny house was not only unfit for human habitation, and had a musty smell. When looking at this cabin/tiny house, **it was not very difficult to see that the base of this, cabin/tiny house was rotting, splintering, and deteriorating ...**

The front walkway on the ground to enter into the main door of the cabin/tiny house was made up of what looked like a wooden base, and some kind of cement pads were put on top of the dilapidated, rotting wood... This area was breaking down, and for anyone to try and even attempt to enter this place would have put themselves in a situation to get hurt.

There was a deck, that was in rough shape, with two stairs that was breaking down and unsafe. ... The wiring and boxes, this was on the outside of the house on the deck side, which was used to supply power.. to the house and looked like a fire hazard. ...”

[Reproduced as written]

The statement of DW, dated June 9, 2022, in part reads,

“... The said structure (cabin) and residence was a bad, dangerous place... NO ONE should’ve lived there! Best choice to tear it down. HAZARD! ..”

[Reproduced as written]

Analysis

Section 51 (2) of the Act provides:

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

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[my emphasis]

(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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy the rental unit, and then substitute another purpose.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

Based on all of the above, the evidence and testimony from the tenant and landlord, and on a balance of probabilities, I find as follows:

The Two Month Notice issued by the landlord states that mother or father of the landlord or landlord's spouse would be occupying the rental unit after the effective date in the Two Month Notice. The evidence of the landlord was that their son was going to reside in the rental unit and there was nowhere on the Two Month Notice to indicate this; however, clearly that is not the case, as the form clearly identifies a child of the landlord. This leads me to question the credibility of the landlord.

The rental unit was not occupied by the landlord's parent or even the landlord's child. I find the landlord did not use the premises for the stated purpose within the Two Month Notice and must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and the Policy Guideline regarding compensation and extenuating circumstances.

The rental unit was a cabin between 80 to 100 years of age and little if any repairs have been completed in the last 35 years, by the previous owner. The evidence of the landlord was that it was only after the tenant vacated that they determined the rental unit was unlivable for their child and was later demolished and the land made to create two RV sites.

However, the landlord purchased the property in October 2020 and issued the Two Month Notice on February 21, 2021. I find if the landlord had done their due diligence to have the rental unit inspected by a qualified person before they issued the Notice they would have known at the very least the cabin would have needed extensive repairs or if the rental unit had to be demolished. Then the landlord could have issued a notice to end tenancy under section 49(6) of the Act.

Further, the witness statements support that the landlord had to have known that the rental unit needed major repairs at the time they issued the Notice. That was not the reason why the Two Month Notice was issued, nor is this considered an extenuating circumstance as this was foreseeable.

A landlord when they issue a notice to end tenancy have an obligation under the Act, to satisfy the reason stated within the notice for ending the tenancy. It does not permit the landlord to change the reason for ending the tenancy such as renovate the rental unit or demolish it or for their child to use at a later date.

The landlord further submits they were using the cabin for storage; however, the Two Month Notice was not issued for their own personal use, or for non residential use to become part of the campground. The Notice was issued for the reason that the parent of the landlord would be occupying the premises. Further, if the cabin was such a hazard as claimed I find it would be highly unlikely that they would continue to use it for any purpose.

I find the landlord has not provided any extenuating circumstance that was unforeseeable.

I grant the tenant a monetary order in the amount of **\$7,500.00**, this is 12 x the month rent of \$625.00. This monetary order may be filed in a court of competent jurisdiction and enforced as an order of that court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for compensation related to a Two Month Notice is granted. The tenant is granted a monetary order in the above noted amount.

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

Dated: June 29, 2022

Residential Tenancy Branch