



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$12,000.00 from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 25, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or the Tenant.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application, and the Landlord provided his in the hearing. They confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2020, with a final monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit. They agreed that the Tenant vacated the residential property on July 31, 2021, and that she mailed her forwarding address to the Landlord with this dispute.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated May 25, 2021, and which has the rental unit address on it. The One Month Notice was served in person on May 31, 2021, it has an effective vacancy date of July 31, 2022. It was served on the grounds that the rental unit will be occupied by the Landlord or the Landlord's close family member (the Landlord and/or the Landlord's spouse in this case).

In the hearing, I asked the Tenant to explain her claim to me. She said:

I'm seeking \$12,000.00, because he lied to me that he was going to move in. The rental market [in this area] is in a crisis; everyone is asking for twice as much as they should be, and I can't afford it. It's hard to have to pay \$2,400.00 for a two bedroom rental. I've had to dig into all of my savings that accumulated through my separation. He said he wasn't going to put the house up for two years – for a couple years - I thought I was good for a couple years, but I wasn't, and I need to take care of my kids. \$12,000.00 out of \$536,000.00 is not that bad.

I asked the Landlord why he served the Tenant with the Two Month Notice, and he said:

Well because her boyfriend pissed me off, basically. Her spouse pissed me off, because I was doing a friend a favour and she agreed to move out at the end of May. I asked her if she wanted it to be legal and she said no, and I waited until the 11th hour, and it was clear that they were not going to move out – that's their

act of bad faith. When she moved in, she didn't say she had a boyfriend. Why should her family get \$12,000.00? I have family, too. Her boyfriend pissed me off, and I made an irrational decision, and I shouldn't have done it.

I asked the Landlord what steps he took after the effective vacancy date to accomplish the purpose of the Two Month Notice. He said: "I lived there for awhile, but not for six months. I stayed in the basement for 3 or 4 days a week, but I never really lived there full time."

The Landlord said he sold the property in late September, early October. He said possession was November 26, 2021 – less than six months after the effective vacancy date.

I asked the Landlord if there were any extenuating circumstances that contributed to his not fulfilling the purpose of the Two Month Notice. He said:

I have health issues. I'm about to turn 70, and I realized I couldn't live there and do all the work that was needed. The house needed someone to fix it, and I wasn't that person. It was all I could do to clean out my mother's possessions. I still retained the basement, and I had the double garage. The property was not all theirs. I was there a lot going through the basement. My step-father was a mechanic and he never threw anything away.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51 (2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord 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.

Section 51 (3) of the Act states:

(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.
[emphasis added]

As explained in Policy Guideline 50 ("PG #50"):

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair [or sell] the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

Further, I find from the Act and PG #50, that the intent of section 49 (3) is for a landlord or a close family member to move into the rental unit for more than just the six months noted in the Policy Guideline. Section 49 (3) of the Act states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[emphasis added]

Policy Guideline #2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" ("PG #2A") states:

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

...

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months **and** that they have no other ulterior motive. .

[emphasis added]

When I asked the Landlord why he served the Tenant with the Two Month Notice, he did not say it was because he and/or a family member needed to move in; rather, he said it was because the Tenant's boyfriend "pissed him off". The Landlord said: "I lived

there for awhile, but not for six months. I stayed in the basement for 3 or 4 days a week, but I never really lived there full time.”

As noted in PG #2A above: “Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy,”

Based on the evidence before me, overall, I find that the Landlord clearly had an ulterior motive for issuing the Two Month Notice, rather than needing or wanting to move into the residential property. As such, I find the Landlord issued the Two Month Notice in bad faith, and therefore, the Tenant succeeds in her Application. The Landlord did not provide sufficient evidence that extenuating circumstances caused this situation.

The Tenant is successful in her Application, because I find the Landlord breached sections 49 and 51 of the Act, by not having a good faith intention for the Landlord and/or his close family member to occupy the rental unit for “at least” six months after the end of the tenancy.

I, therefore, award the Tenant twelve times the rent of \$1,000.00 or **\$12,000.00**, pursuant to sections 51 and 67 of the Act. Further, given her success, I also award the Tenant with recovery of her **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. Accordingly, I grant the Tenant with a Monetary Order of **\$12,100.00**, pursuant to sections 51 (2) and 67 of the Act.

Conclusion

The Tenant’s claim for recovery of 12 times the monthly rent is successful in the amount of \$12,000.00. The Landlord’s testimony made it clear that he did not have a good faith intention to move into the residential property, further to having issued a Two Month Notice to End the Tenancy for Landlord’s Use of the Property. Further, given her success, the Tenant is awarded recovery of the \$100.00 Application filing fee from the Landlord.

I, therefore, grant the Tenant a **Monetary Order** under section 67 of the Act from the Landlord of **\$12,100.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 05, 2022

Residential Tenancy Branch