



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 Tenants' Application for Dispute Resolution, made on February 22, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. The Landlord stated that she was the only one who received the Application, not her husband. The Landlord confirmed that she was able to share the information with her husband and was prepared to proceed with the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2020. The Tenants were required to pay rent in the amount of \$1,800.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$100.00. The tenancy ended on October 1, 2021 in compliance with a Two Month Notice to End Tenancy for Landlord's Use of the Property.

The parties testified and agreed that the Landlord served the Tenants with the Two Month Notice with an effective vacancy date of September 30, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice was;

"The rental unit will be occupied by the Landlord's close family member (Father or mother of the landlord or landlord's spouse)."

The Tenants stated that in November 2021 they returned to see the rental unit to find it was still vacant. The Tenants provided a picture in support. The Tenants stated that the Landlord had previously indicated that her mother would occupy the rental unit. The Tenants stated that they monitored the rental unit for some time and had some communications with the Landlord regarding their intent with the rental unit.

The Tenants stated that the Landlord's mother never occupied the rental unit and that the Landlord listed and sold the rental property in April 2022, therefore, the Landlord did not accomplish the stated purpose of the Two Month Notice. The Tenants are therefore seeking compensation equivalent to twelve times the monthly rent in the amount of \$21,600.00.

The Landlord stated that she purchased the rental property in August 2020 with the intent to move her mother from Columbia to occupy the basement rental unit. The Landlord stated that once the Covid-19 travel restriction were lifted, she began the immigration process for her mother to travel to Canada. The Landlord stated that she served the Two Month Notice to the Tenants in July 2021 after completing the immigration process and purchasing a flight ticket for her mother. The Landlord provided a copies of travel documents in support.

The Landlord stated that her mother had pre-existing knee issues, and that in September 2021, the Landlord's Mother learned that she was a candidate for a total knee replacement. The Landlord provided medical documents in support. The Landlord

stated that her mother's decision to have her knee replaced in Columbia delayed her arrival to Canada and therefore could not occupy the rental unit as intended.

The Landlord stated that her mother's knee was replaced in February 2022 and that she was advised not to travel for a further 6 months due to high blood pressure. The Landlord stated that her mother has had issues with uncontrolled blood pressure which has restricted her ability to travel to Canada as intended. The Landlord provided medical documents in support. The Landlord stated that she used the rental unit for her own use during this time.

The Landlord confirmed that she decided to list the rental property for sale in May 2022 before it sold June 13, 2022 so that she could move to Columbia to care for her Mother.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

- (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.**

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 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. 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 dishonest motive.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under

section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenants are claiming compensation in the amount of \$21,600.00 which represents twelve months of rent as the Landlord did not accomplish the stated purpose of the Two Month Notice.

In this case, I accept that the Landlord’s Mother did not occupy the rental unit as the Landlord had intended. I find that the Landlord has provided sufficient evidence to demonstrate that her mother had medical treatment to replace her knee prior to her planned trip to Canada to occupy the rental unit. I accept that during this time, the Landlord’s Mother learned about her uncontrolled high blood pressure which prevented her ability to travel for a further six months.

I find that the Landlord provided sufficient evidence to demonstrate that she had gone through all the required immigration steps and purchased a flight ticket for her mother to travel to Canada to occupy the rental unit. I find that the Landlord’s Mother’s health issues created an unforeseen extenuating circumstance which prevented the Landlord from moving her mother into the rental unit.

I find that due to the change in circumstances, the Landlord decided to sell the rental property to go care for her mother in Columbia. I accept that being in close proximity to care for her mother was the Landlord’s intent. As such, I find that the Landlord is excused from using the rental unit for the stated purpose due to the extenuating circumstance. As such, I dismiss the Tenants’ Application without leave to reapply.

Conclusion

The Landlords have demonstrated that an extenuating circumstance has prevented them from accomplishing the intended purpose of the Two Month Notice. As such, the Tenants' Application is dismissed without leave to reapply.

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: July 19, 2022

Residential Tenancy Branch