



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the tenant's personal property pursuant to section 65;
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the respondent to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset, I informed the parties they were not permitted to record the hearing. The parties confirmed that neither of them was recording the hearing.

The parties provided their email addresses to which the Decision shall be sent.

Preliminary Issue - Agreement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. Before the conclusion of the hearing, the parties agreed the tenant could attend at the unit on July 30, 2022 at 4:00 PM to get his personal possessions stated by the tenant to be: patio table, chairs and lawn mower.

They did not reach settlement on the remainder of the issues and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to:

- a monetary order in an amount equivalent to twelve times the monthly rent?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified as follows with respect to the background of the tenancy. The tenancy was entered into between the tenant and RD, whose name appears on the first page. Monthly rent was \$2,750.00. The tenant occupied the rental unit with his spouse and children. The tenancy began on May 1, 2018, and ended on February 28, 2022 when the tenant sold the property to the respondent.

At the beginning of the tenancy, the tenant paid a security deposit of \$1,375.00 which has not been returned to him.

The tenant testified RD served him with a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of which was submitted. The Two Month Notice was in the standard RTB form. The Notice was dated and served December 31, 2021 and had an effective date of February 28, 2022. The reason for the Notice was:

All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Notice states that a copy of the contract of purchase was attached to the Notice.

The tenant testified he did not dispute the Notice and moved out on February 28, 2022. He was informed by the landlord the respondent took possession of the property on March 2, 2022.

The tenant stated as follows. The tenant moved out most of their personal possessions by the vacancy date. However, before the vacancy date, the tenant informed RD of difficulties the family was experiencing in finding a place to move to. The tenant told him the family had to move to a hotel and put their belongings in storage. He was unable to move everything by the move-out date and he would return for the remainder of his possessions. The tenant stated he left the following: patio table, chairs and lawn mower. The tenant stated he returned on

March 4, 2022 to pick up the items and could not find them. The tenant requested the respondent return the items to him. As stated above, the parties agreed to a time when the tenant can collect the remainder of their possessions.

The tenant testified that he has observed the property since he moved out from his employment travel. He noticed that the respondent listed the property for sale shortly after the tenant moved out. The tenant stated that he brought this Application for Dispute Resolution on April 3, 2022. Shortly after service upon the Respondent, the For Sale sign was taken down and someone other than the respondent moved into the unit.

The respondent testified as follows. The respondent had instructed RD to issue the Two Month Notice as described above as he intended to either move into the property himself or have his cousin move in.

The respondent further testified that he took possession of the unit on March 2, 2022. Once he took possession, the respondent and his cousin spent three months renovating the unit. On June 1, 2022, the respondent's cousin moved into the unit and is living there with no plans to move out. The respondent has never occupied the unit and has no intention of doing so.

The respondent acknowledged that he put a For Sale sign in front of the building shortly after he purchased the property and removed it as testified by the tenant. However, he testified he did not have any intention to sell but was merely getting information on the market price to see if there were any potential buyers.

In summary, the tenant requested an Order for the return of his possessions, compensation of 12 months rent, and reimbursement of the filing fee.

The landlord stated the tenant is not entitled to 12 months rent as compensation as his cousin moved into the unit. The respondent agreed to the return of the possessions as set out above.

Analysis

Section 49 – Reason for Ending a Tenancy

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that 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:

(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.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51(2) – Application by Tenant for Compensation

Section 51 of the Act sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the Act. A tenant may apply for an order for compensation equivalent of 12 times the monthly rent under section 51(2) of the RTA. There are two grounds for such an application.

Section 51 (2) of the Act provides:

(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 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.

(Underlining added)

In this case, the tenant claimed that steps were not taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the

tenancy under section 51(2)(a) as neither the landlord nor a close family member occupied the unit within a reasonable period after the effective date of the Notice.

Burden of Proof

The onus is on the respondent to prove that steps were taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a respondent to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline states the onus is on the respondent to establish compliance with section 49, stating:

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 under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

The effective date of the Notice was February 28, 2022. Pursuant to section 51(2) of the Act, the landlord must prove that the respondent or a close family member moved into the rental unit "within a reasonable period after the effective date of the notice".

Guideline # 50 addresses the definition of "reasonable time" to accomplish the stated purpose under section 49, stating:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time.

For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start

using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.

For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Pursuant to the above, a reasonable period after the effective date of the Notice is 15 days or somewhat longer. The dictionary definition of "somewhat" is "to a moderate extent or by a moderate amount". I find Policy Guideline 50 contemplates a reasonable period to be around 15 days and I find it should be no more than 30 days which is twice the amount stated.

I find neither the respondent nor a close family member moved into the rental unit within a reasonable period after the effective date of the Notice.

It is open to the respondent to submit that extenuating circumstances prevented the respondent from moving into the rental unit within a reasonable period after the effective date of the Notice and I find the Respondent has not done so here. The Respondent has not submitted any evidence to allege or establish extenuating circumstances. The Respondent submitted no documentary evidence of any repairs or renovations, dates when they were started or completed, and any reason for delay.

Close Family Member

The Act defines "close family member":

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

The respondent stated that his cousin moved into the unit. I find a cousin is not a "close family member" under the Act.

Findings

I find the respondent failed to comply with S 51(2)(a). I find 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 as neither the respondent nor a close family member moved into the unit.

Pursuant to section 51(2) of the Act, the respondent must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement which I find is \$33,000.00. I grant an award to the tenant under this heading in this amount.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

In summary, I grant the tenant a Monetary Order in the amount of \$33,100.00.

Conclusion

The Application is granted. The tenant is granted a Monetary Order against the respondent in the amount of \$33,100.00.

As agreed by the parties, the tenant shall attend at the unit on July 30, 2022 at 4:00 PM to get his personal possessions stated by the tenant to be: patio table, chairs and lawn mower.

This Monetary Order must be served on the respondent. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC

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 26, 2022

Residential Tenancy Branch