



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC FFT**

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 21, 2021 (the "2 Month Notice") pursuant to sections 51(2) and 67; and
- authorization to recover the filing fee of the Application from the Landlords pursuant to section 72.

The two Landlords ("BK" and "KB") and the two Tenants ("JOS" and "JOD") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

JOS stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on the Landlords by registered mail on December 10, 2021. JH submitted copies of the Canada Post receipt and mail stubs to corroborate his evidence. I find the Tenants served the NDRP Package on each of the Landlords pursuant to the provisions of sections 88 and 89 of the Act.

KB stated the Landlords served their evidence on each of the Tenants by registered ExpressPost on May 11, 2022. KB provided the Canada Post tracking numbers for service of the Landlords' evidence to corroborate his testimony. I find the Landlords' evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

Issues to be Decided

Are the Tenants entitled to:

- compensation from the Landlords in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on August 1, 2017, for a fixed term ending July 31, 2018, with rent of \$1,150.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$575.00 and a pet damage deposit of \$250.00 by July 5, 2017. The parties agreed the Tenants vacated the rental unit on August 15, 2022.

The parties agreed the Landlords served the Tenants with the 2 Month Notice on July 21, 2021. The 2 Month Notice had an effective date for move-out on September 30, 2022. The 2 Month Notice stated the reason for ending the tenancy was the rental unit would be occupied by the landlord or the landlord's close family member. BK stated the Landlords intended the rental unit to be used by BK's mother ("CK").

BK stated that her father passed away in 2018 and CK had been living alone in the home her parents resided. BK stated she assisted CK downsize the contents of her parent's home. BK stated the Landlords purchased a condominium ("Condo") for CK in anticipation of CK moving out of her house and then CK's house was put up for sale. BK stated that, prior to moving into the Condo, CK fell and fractured her pelvis in four places and was admitted to hospital ("Hospital") where on April 18, 2021 where she stayed. BK stated CK was discharged from the Hospital on June 14, 2021. BK submitted into evidence a copy of the discharge information ("Discharge Documentation") from the Hospital. The Discharge Documentation stated CK was 80 years old and had a background history of a serious medical conditions which were described in detail.

BK stated CK was then moved to an assisted recovery facility from June 14 to August 27, 2021. BK stated CK decided that she did not want to live in the Condo and wanted

to be closer to the Landlords in a different location in British Columbia.. BK stated CK was moved to another assisted living facility located in the same City as the Landlords where she continues to reside. BK submitted into evidence a copy of the contract for the assisted care facility in the City in which the rental unit is located to corroborate her testimony that her mother was staying at that facility.

BK stated the Landlords anticipated that, at the time they served the 2 Month Notice, the Tenants would vacate on the effective date of the 2 Month Notice, being September 30, 2021. However, the Tenants gave notice to move out before the effective date of the 2 Month Notice and, instead, the Tenants vacated the rental unit on August 15, 2021. BK submitted into evidence an affidavit from her sister ("AK") dated May 5, 2022 ("AK's Affidavit") to corroborate her testimony that the Condo was sold and that she performed the move-out condition inspection of the rental unit with the Tenants on August 16, 2021.

BK stated that, after the Tenants vacated the rental unit, the Landlords arranged for renovations to be performed on the rental unit. BK submitted into evidence an affidavit dated November 3, 2022 from the contractor ("Contractor") in which he stated renovations were commenced on the rental unit following a conversation with BK on August 16, 2021. The Contractor stated the work performed on the rental unit included new flooring throughout the home, new electrical, new doors, new drywall, windows and paint and a new kitchen and bathroom. The Contractor stated he talked to BK on or about October 24, 2021 who told him that CK was not moving, CK had decided it was better for her to stay where she was and that there was no hurry to get the final touches done. BK stated that, when the renovations were almost completed at the end of October 2021, CK did not feel she could cope physically. BK submitted into evidence 14 photographs of the rental unit to corroborate her testimony that renovations were performed on the rental unit.

BK stated the Landlords then advertised the rental unit for rent on Facebook for the end of October or beginning of November. BK stated she gave the Tenants a heads-up on what the Landlords were doing by sending a text to JOD on October 24, 2021. BK stated new tenants moved into the rental unit on December 1, 2021 for a three-month period. BK did not submit a copy of the three-month lease to corroborate her testimony. KB stated the Landlords spent almost \$25,000.00 to renovate the rental unit which he described as a 1908 teardown. BK submitted into evidence an affidavit of KB dated May 5, 2022 to corroborate her testimony. In his affidavit, KB stated that on or about October 24, 2021, CK told the Landlords that she was not feeling strong enough to

move into the rental unit and felt it was best to remain in the assisted care facility for the time being until she felt she was strong and able to move around better.

JOS stated the Tenants were surprised when they were served with the 2 Month Notice by the Landlords. JOS stated the Tenants found a suitable home and immediately served the Landlords with a notice advising that they would be vacating the rental unit on August 15, 2022. JOS stated the move-out condition inspection was performed by AK. JOS stated that, during the inspection, AK stated her mother would never move into the rental unit as it was not her mother's style and she need additional assistance.

JOS submitted into evidence a text from BK dated August 31, 2021. In that text, BK stated CK had fallen and that she was living in an assisted care facility located in the same City as the rental unit. BK stated in the text that the Tenants would see ads for the rental unit for rent. JOS submitted into evidence online advertisements showing the rental unit was available for rent for \$1,825.00 per month. JOD stated that, on August 17, 2021, she returned to the rental unit to finalize cleaning. JOD stated she talked to an outside contractor who indicated the Landlords were hoping to rent the rental unit for \$1,700.00 and that the Landlords were not moving CK into the rental unit. JOD referred to the photographs of the rental unit submitted into evidence by BK. JOD stated the photographs demonstrate that no mobility devices had been installed in the bathroom and no handrails had been installed at the steps leading into the rental unit. JOD stated that, based on CK serious medical issues before she broke her pelvis, it was the Tenants' position that the Landlords should have known that CK would not be able to live alone and that the Landlords were not acting in good faith at the time they served them with the 2 Month Notice.

BK stated the Landlords expected the Tenants to stay until the effective date of the 2 Month Notice, being September 30, 2021. KB stated that it took three months to do the renovations. KB stated that it was a very fluid situation because of CK's medical condition. KB stated that the amount CK is currently paying for the assisted living facility is unsustainable. BK stated that her mother feels afraid of living on her own at this time. BK stated the Landlords still intend to get CK into the rental unit. KB stated the pictures of the rental unit were taken before they went on holiday and that the Landlords will install handrails and a ramp on the steps leading to the entrance of the rental unit prior to CK moving into the rental unit. BK stated she has engaged an occupational therapist to come into the rental unit and inspect it to see what is required to assist her mother's mobility. BK stated it was the Landlords position that they should be excused from paying the Tenants compensation as there were extenuating circumstances that

prevented the Landlords from using the rental unit for the purpose stated in the 2 Month Notice.

Analysis

Pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

The Tenants seek \$13,800.00 compensation pursuant to section 51(2) of the Act the basis the Landlords failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice was issued pursuant to section 49(3) of the Act which 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.

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

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

The 2 Month Notice stated the rental unit would be occupied by the Landlords' close family member. The Landlords stated the rental unit was to be used by BK's mother. Accordingly, in these circumstances, subsection 51(2) of the Act requires the Landlord establish that a parent of the Landlords has occupied the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. The effective date of the 2 Month Notice was September 30, 2021. Section 51(2)(a) states the Landlord must pay the Tenants compensation that is equivalent to 12 months rent if the Landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the 2 Month Notice. Section 51(2)(b) requires the Landlord use the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. [...]

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.

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on 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 for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

[...]

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months

[emphasis in italics added]

The Landlords stated they were unable to accomplish the purpose stated in the 2 Month Notice due to CK's continuing mobility issues. The Tenants stated AK told them, at the time of the move-out inspection, that CK would never move into the rental unit because the rental unit was not her style and CK required assistance. AK's affidavit confirms AK performed the move-out condition inspection with the Tenants. The Landlords did not dispute JOD's testimony that AK told her during the inspection that CK would never be moving into the rental unit. JOS also stated that a worker at the rental unit had told the

Tenants that the Landlords were planning to rent the rental unit for \$1,700.00 per month. The Landlords did not challenge this evidence.

The Landlords knew CK was 80 years old. The Discharge Documentation disclosed CK has multiple serious medical issues. I find the Landlords knew, or ought to have known, that CK had serious health issues that made her medically unstable before they served the Tenants with the 2 Month Notice. As such, it could not have been unexpected to the Landlords that CK might not be able to move into the rental unit. Notwithstanding CK's unstable medical conditions, even before she broke her pelvis, the Landlords served the Tenants with the 2 Month Notice on July 21, 2021. As such, the Landlords assumed the risk that the rental unit might not be used for the purposes stated in the 2 Month Notice at the time the Notice was served on the Tenants.

It is undisputed that CK has not moved into the rental unit after the effective date of the 2 Month Notice and occupied it for a minimum of six months. The Landlords admitted they rented the rental unit starting December 1, 2021, being less than six months after the effective date of the 2 Month Notice on September 30, 2022. CK stated the rental was for a three-month period only but did not submit a copy of the rental agreement to support her testimony. Regardless, the rental unit was used for a purpose other than stated in the 2 Month Notice. As stated in PG 50, the Landlords cannot end the tenancy for use by the parent of one of the Landlords pursuant to the 2 Month Notice and then re-rent the rental unit to a new tenant without the parent occupying the rental unit for at least 6 months. As the Landlords re-rented the rental unit during the 6-month period after the effective date of the 2 Month Notice, they breached the provisions of section 52(2) of the Act. I find the Landlords assumed the risk of being required to pay the Tenants compensation pursuant to section 52(2) in the event CK never moved into the rental unit due to her unstable medical condition. Based on the foregoing, it is my opinion that there were no extenuating circumstances that excuse the Landlords from paying the Tenants the amount required under section 51(2) of the Act.

Based on the above, I find the Landlords have not proven, on a balance of probabilities, there were extenuating circumstances under section 51(3)(a) of the Act that prevented them from accomplishing the purpose stated in the 2 Month Notice. As such, I Order the Landlords to pay the Tenants compensation equal to 12 times the monthly rent of \$1,150.00, being \$13,800.00, pursuant to section 51(2) of the Act,.

As the Tenants have been successful in the Application, I order the Landlords to pay the Tenants \$100.00 for reimbursement of their filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenants are granted a Monetary Order for \$13,900.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent at \$1,150.00 per month	\$13,800.00
Reimbursement of Filing Fee for Application	\$100.00
TOTAL	\$13, 900.00

The Tenants are provided with this Order on the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: July 28, 2022

Residential Tenancy Branch