



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On December 2, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with V.D. attending as a co-tenant. The Landlord attended the hearing, with B.M. attending as co-owner, and R.H. attending as counsel for the Landlord. The Landlord did not have any opposition to V.D. attending the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of R.H., provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on or around December 7, 2021. R.H. confirmed that the Landlord received this package; however, later in the hearing, it was determined that a copy of the tenancy agreement was not served to the Landlord. The Tenant confirmed that he did not serve a copy of the tenancy agreement to the Landlord, but R.H. advised that they were prepared to proceed without a copy of that agreement before them. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing and

evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

R.H. advised that the Landlord's evidence was served to the Tenant on June 21, 2022 by registered mail. The Tenant confirmed that he received this evidence approximately two weeks ago. As this evidence was received by the Tenant pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on December 15, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 31, 2021, pursuant to the Notice. Rent was established at \$2,052.00 per month and was due on the first day of each month. R.H. confirmed that these details were likely correct, to the best of their knowledge.

All parties agreed that the Tenant was served the Notice on August 31, 2021. The Notice was served by the original landlord (seller) of the rental unit, as instructed by the Landlord, because "All of 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.” It was indicated on the Notice that the effective end date of the tenancy was October 31, 2021.

R.H. stated that the Landlord currently lives with his parents, and does not pay any rent. Moreover, he wanted to move into the rental unit with his own family because the location was closer to resources for their autistic child. In addition, the location of the rental unit was much more affordable to purchase than the area where they currently live.

R.H. acknowledged that the Landlord never moved into the rental unit after the effective date of the Notice, but this was due to extenuating circumstances. She submitted that B.M. suffered a shoulder injury in May 2021, and she referenced medical documents submitted as evidence to support this. As well, she noted a September 9, 2021 doctor’s note which indicated that B.M. needed more time off work because of this shoulder injury, and due to grief.

R.H. advised that B.M.’s parents live in California and that her mother passed away on July 2, 2021. As a result, B.M. spent much of July 2021 in California. She submitted that B.M.’s father fell into a clinical depression, which is supported by a doctor’s note submitted as evidence. Due to B.M.’s shoulder injury, and grief from her mother’s passing, she was unable to return to work, which resulted in the Landlord being unable to afford to move into the rental unit. As such, the rental unit was listed for rent in October 2021. In addition, she stated that B.M. went to visit her father again in November 2021.

R.H. submitted that extenuating circumstances do not have to be one specific event, but can be a culmination of events that exacerbate a situation. She referenced a previous Decision of the Residential Tenancy Branch to support this position. She stated that it cannot be argued that B.M. should have known that she would have been affected by grief. As well, the Landlord should not be driven into financial ruin by being forced to move into the rental unit.

B.M. advised that her son had a difficult school year, so she researched different schools. She stated that she found a suitable school near the rental unit, but was informed that her son was not accepted into the program. However, she is not sure when she was informed of this, other than it was sometime in 2021. She stated that she

is too stressed to deal with this matter or to have many detailed answers to any questions.

R.H. advised that the Landlord's parents have been actively involved with driving their grandson a great distance to assist, and that they would have done the same thing had the Landlord moved into the rental unit. She stated that economics have played a major factor as the Landlord does not currently pay rent by living with his parents. She referenced a past Decision of the Residential Tenancy Branch that she believed is relevant to this circumstance.

The Tenant advised that the Landlord posted an ad to re-rent the unit on October 25, 2021; however, in the Landlord's own evidence, it was noted that they decided to re-rent the unit on October 12, 2021. He noted that in the previous Decision that R.H. referred to, the landlord re-rented the unit three months after the effective date of the notice. In contrast, in this instance, the Landlord advertised the rental unit while the Tenant was still living there.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where all the conditions on which the sale depends have been satisfied, and the purchaser asks the original landlord, in writing, to give notice to end the tenancy because 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord asked the original landlord to serve the Notice because all of the conditions of the sale were

satisfied, and he wanted to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated August 31, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (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.

At the time the Notice was served, the Landlord advised that the intention was for him to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after he gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "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)."

As well, Policy Guideline # 50 states the following:

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 for 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 to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. 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 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.”

When reviewing the undisputed evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlord or close family member only. As the Landlord acknowledged that the rental unit was not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

Regarding R.H.'s reference to a past Decision of the Residential Tenancy Branch that she believes is relevant, I acknowledge that I have reviewed this past Decision. However, I am not bound or obligated to follow past Decisions of the Residential Tenancy Branch.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I may need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In considering the Landlord's submissions, I acknowledge that the Landlord's plan was to move into the rental unit, and that a key reason for moving to this area was due to the location of a school that would have been ideal for their son. However, I note that the Contract of Purchase and Sale was dated August 30, 2021, and the Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession form was dated for the same day.

From this, I can reasonably infer that the Landlord had been planning for this purchase likely for a significant period of time prior to this date. However, as B.M. confirmed that they were not accepted into the school of their choice in the area, I question the legitimacy of the submission that they had planned to move into the area due to this school. In my view, it does not make sense to purchase a property in the area when they did not yet have confirmation of even being accepted into the school of their choice. I find this causes me to question the reliability of this submission.

Moreover, I note that B.M.'s mother passed away on July 2, 2021, and as noted above, I find it more likely than not that the purchase of a house is a significant and substantial decision that generally requires research, planning, and time, and that it is usually not a spontaneous decision. While R.H. argued that B.M. could not have known that she would have been affected by grief, I find that I am doubtful of this suggestion. Given that

the purchase of the rental unit was almost two months after the passing of the mother, I find it reasonable to conclude that there was a significant period of time after that passing to assess whether or not the house purchase, and moving into the rental unit, would have been a feasible decision.

Furthermore, while R.H. claimed that another extenuating factor for not moving into the rental unit was because B.M. was unable to return to work, when reviewing the doctor's notes submitted, I find it important to highlight that the July 9, 2021 note stated that the "Patient requires time off until end of July due to medical issues." However, this note does not specifically elaborate on what those medical issues were that prevented her from returning to work.

Additionally, the September 9, 2021 note stated, "Please allow this patient to continue at 4 hours/day of work for the time being." This note indicates to me that B.M. had been working four hours per day prior to this assessment and that she was permitted to continue on this schedule until the next assessment. I find that this note is directly contrary to R.H.'s submission that "Along with her pre-existing shoulder injury, Mrs. Mann's grief made it impossible for her to return to work in the following months." Clearly from this doctor's note, working for B.M. was not impossible as it is evident that she had in fact been working, and had been capable of working, for some time prior to September 9, 2021.

Furthermore, the November 4, 2021 note stated that "Starting Dec 1/2021, patient can increase work hours from 4hrs/day to 6 hrs/day X 1 month." I find it reasonable to conclude from this note that B.M. had been working since before the September 9, 2021 assessment, that she had been successfully maintaining the prior return to work schedule, and that her condition had been improving to the point that she could increase her workload to six hours per day as of December 1, 2021. In my view, this is entirely contradictory to the submissions that B.M. was unable to work, either due to the shoulder injury or due to grief, as alleged.

Given my assessment of the evidence and testimony before me, I find that the above doubts and inconsistencies in the Landlord's evidence and testimony cause me to question the reliability of those submissions, and the credibility of the Landlord on the whole. I am satisfied that these submissions were likely crafted after receipt of the Notice of Hearing package in an attempt to portray a circumstance that did not exist. Ultimately, I do not accept that there were any extenuating circumstances that prevented the Landlord from occupying the rental unit and residing there for at least six

months after the effective date of the Notice. As such, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$24,624.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$24,724.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 21, 2022

Residential Tenancy Branch