



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- 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 landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The landlord, a corporation, was represented by the agent DV (:the landlord”).

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The landlord did not submit any documentary evidence. Nevertheless, the landlord provided considerable testimony with which the tenant disagreed. Not all asserted facts and arguments referenced in the 90-minute hearing are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant filed this application on January 4, 2022. They claimed they are entitled to compensation of 12 months rent of \$49,300.00 as the landlord's parents, that is, the parents of the sole shareholder, did not move into the unit as stated in the Two Month Notice.

The landlord testified they cancelled the Notice and there were extenuating circumstances. They requested the application be dismissed.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	November 1, 2020
Fixed Term End Date	October 31, 2021
Vacancy Date	November 30, 202`
Rent payable on first of month	\$4,100.00
Security deposit	\$2,050.00 (dealt with at end of tenancy)

The tenancy agreement was between the tenant and a previous owner. It contained a clause initialed only by the landlord stating that the tenant would vacate at the end of the term. The named landlord had purchased the building shortly after the tenant moved in.

The parties agreed this is their fourth dispute. Reference to the previous file numbers appear on the first page.

The parties agreed the landlord issued a Two Month Notice to end the tenancy as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") – copy submitted in RTB form
Date of Notice	August 4, 2021
Effective Date of Notice	October 31, 2021
Date and Method of Service	Posting, acknowledged by tenant
Reasons for Issuance	Unit will be occupied by the father or mother of the landlord or landlord's spouse ("the landlord's parents").

The tenant filed an application to dispute the notice on August 17, 2021. However, they eventually accepted the Notice and moved out on November 30, 2021. As they had vacated the unit, the tenant's Application for Dispute Resolution was dismissed without leave to reapply at the hearing on January 18, 2022. The RTB file number is referenced on the first page.

The tenant testified as follows. They are a family with 3 children. They experienced ongoing unresolved problems with the unit and conflict with the landlord. One such problem related to a water leakage in the basement. The tenant had notified the landlord of the problem and the landlord did not act effectively to solve the matter which persisted until they moved out. The issuance of the Notice after making repeated such complaints led the tenant to believe the Notice was issued to get rid of a troublesome tenant and in retaliation for the demands the landlord act on various issues. The tenant also suspected the landlord wanted to rent the unit for more money.

The parties agreed the landlord owned a residence across the street from the tenant. The landlord was unable to provide information on the reasons that unit was not suitable or available for the landlord's parents.

The tenant testified the landlord owned many residences in the city and it "made no sense" the landlord's parents would want to live in the unit which required repairs. The landlord was unable to clarify how many other residences, if any, the landlord owned.

In any event, the tenant testified they could not take it anymore. They "gave up" trying to resolve matters with the landlord and saw no end to the disputes. They rented alternate accommodation on November 15, 2021 and notified the landlord on November 19, 2021 they were moving out at the end of November 2021.

The landlord acknowledged receiving the notice from the tenant that they were moving out at the end of November 2021.

On November 24, 2021, the parties exchanged emails, a copy being submitted by the tenant and acknowledged by the landlord. The landlord notified the tenant by email that "my parents have found other arrangements". The landlord stated the tenant was "welcome to stay" or the landlord would advertise the house for rent.

The tenant replied the same day rejecting the offer to stay, saying: “We have signed new home already and moving out by November 30th as per notice given by you”.

The tenant testified they did not receive one month’s rent as compensation as required under the Act. The landlord disagreed and stated the tenant received the last month rent free. Neither party submitted supporting documentary evidence. The tenant did not claim a Monetary Order for the compensation owing.

The landlord testified as follows. In September 2021, the month following the service of the Notice, they made the decision that the landlord’s parents would not move into the unit. The landlord stated it may have been because the tenant had disputed the Notice. The landlord did not provide information to explain the decision. The landlord agreed the tenant was only notified of the decision two months later, on November 24, 2021.

The landlord testified the unit was advertised for rent on December 7, 2021, and was rented on December 15, 2021 for \$6,500.00 monthly, an increase of the rent paid by the tenant of \$4,100.00.

The landlord testified the named corporation was a family corporation and all the voting shares were owned by one person, whose parents intended to occupy the unit.

Analysis

The tenant seeks 12 months rent as compensation in the amount of \$49,300.00 as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

Credibility

I find the tenant provided credible testimony in all aspects which was supported by documentary evidence. I find the landlord's testimony to be less reliable and unsupported by any documentary evidence. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

Burden of Proof

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove extenuating circumstances. 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 their onus to prove their position. Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, my findings are set out below.

The Act

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

Section 49 (1) defines a "family corporation":

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

Section 49(4) states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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) 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

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(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.

(Underlining added)

(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.

I accept the corporate landlord is a family corporation under the Act.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property and a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given.

Landlord's Submissions

The landlord acknowledged they did not use the rental property for the reason stated in the Two Month Notice. The parents did not occupy the unit for a six-month duration after the tenant moved out or live in the unit for at least 6 months within a reasonable period after the unit was vacant.

They claimed there were extenuating circumstances. Alternatively, the landlord cancelled the Notice.

Extenuating Circumstances

The landlord claimed that the application by the tenant to dispute the Notice was reason for the landlord's parents not to move into the unit. This argument is akin to asserting there were "extenuating circumstances".

Policy Guideline 50 states as follows about extenuating circumstances:

E. 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 one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed a wildfire.
- A tenant exercised their right of first refusal but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

Extenuating circumstances are meant to cover unanticipated issues or issues which were out of the Landlord's control.

I have carefully considered the Act and the Policy Guideline as well as the landlord's evidence. The tenant is entitled to dispute the Notice and the fact of doing so does not release the landlord from the obligation to comply with the Act.

The landlord submitted no documentary evidence explaining any circumstances that prevented the parents from moving into the unit. The landlord's testimony about the reasons for not moving in were vague, unconvincing and unclear. I find the landlord has not met the burden of proof that there were extenuating circumstances that prevented them from moving in.

Cancellation of Notice

Finally, the landlord asserted that they cancelled the Notice in the email of November 24, 2021.

The parties acknowledged the tenant did not agree to any such cancellation.

As the tenant did not agree to the cancellation and had acted on the Notice by finding another place to live, I find the cancellation was ineffective. I find the effort to cancel the Notice at such a late date to more than likely be an effort by the landlord to evade responsibilities under the Act.

Conclusion

I find the landlord failed to comply with section 51(3) and did not use the rental property for the reason stated in the Two Month Notice. The parents did not occupy the unit for a six-month duration within a reasonable period after the tenant moved out or live in the unit for at least 6 months within a reasonable period after the unit was vacant. There are no extenuating circumstances. The Notice was not cancelled.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement which I find is \$49,300.00. I grant an award to the tenant under this heading of \$49,300.00.

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 \$49,400.00.

Conclusion

The tenant is granted a Monetary Order in the amount of \$49,400.00.

This Monetary Order must be served on the landlord. 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: August 15, 2022

Residential Tenancy Branch