



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNETC FFT

Introduction

The applicants seek \$14,448.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of the \$100.00 application filing fee pursuant to section 72 of the Act.

Hearings were held on January 24, April 12, and August 19, 2022. Interim Decisions dated January 24 and April 12, 2022 set out the background and reasons for the first two hearings being adjourned. Attending the dispute resolution hearing on August 19 were one of the applicants and the respondent.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

As an aside, I recognize that the respondent was suffering from COVID-19 at the time of the August 19, 2022 hearing. The gentleman had a persistent cough and was kind enough to mute his telephone line except when testifying. His testimony was, I should note, sufficiently clear for me to understand, and record, what he had to say.

Issue

Are the applicants entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The applicants' tenancy began March 8, 2017 and ended June 30, 2021. Monthly rent was \$1,204.00. There was a security deposit which is not in dispute.

On April 11, 2021 the applicants were served with a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") from their landlord. The Notice indicated that the tenancy would end on June 30, 2021. On page two of the Notice, it is indicated that the tenancy was being ended 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.

Included with the Notice was a "TENANT OCCUPIED PROPERTY - BUYER'S NOTICE TO SELLER FOR VACANT POSSESSION" dated April 10, 2021, in which it is indicated that the buyer (that is, the respondent in this dispute) intended in good faith to occupy the rental unit. The respondent buyer's signature is affixed to the document.

On May 23, 2021, the tenants discovered online rental advertisements for the rental unit. Copies of the advertisements were submitted into evidence. The advertisements presented the rental unit as being available for rent at \$1,550, while another advertisement listed rent at \$1,600. The advertisements included photographs of the interior of the rental unit. The interior of the rental unit while the tenants were still residing in the property. Also submitted into evidence were photographs of the interior of the rental unit taken by the tenants, showing that the respondent's realtor had presumably, during a showing or viewing, taking pictures of the rental unit.

However, the tenants chose not to dispute the two months Notice and vacated the rental unit on June 30. They moved a few blocks away. And they witnessed people (of a different ethnicity and unlikely related to the purchaser respondent) moving into both the rental unit basement suite and into the upper part of the house. The new tenants moved in on July 1, 2021. The tenants still reside a few blocks away and to this day have not seen anyone appearing to be related to the respondent residing in the basement suite.

The respondent testified that he was living in Brampton, Ontario. He traveled to Kelowna, where the rental unit is located, in March and purchased the property on April 9, 2021. He acknowledged providing the notice of vacant possession to the seller and understood that a *Two Month Notice to End Tenancy for Landlord's Use of Property* would be served on the tenants; he was fully aware that the house was rented to tenants. The respondent further admitted to having posted the rental advertisement on May 23, 2021.

However, the respondent testified that he could not, or was unable to, move into the rental unit because before or in July 2021 he was required to start working from the office, in Brampton. Previously, he has been able to work from home. In all, he testified that he “had no chance to move out [to Kelowna] in July.” He ultimately never moved to Kelowna and into the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 51(2) of the Act states that

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 the landlord or purchaser, as applicable, 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.

In this dispute, the stated purpose for ending the tenancy was so that the purchaser (the respondent) would intend, in good faith, to occupy the rental unit. This reason for ending the tenancy is permitted under section 49(5)(c)(i) of the Act. A notice to end the tenancy for this reason was properly given under section 49(2)(a) of the Act.

However, by all accounts, including that of the respondent's own admission, the respondent never occupied the rental unit at any point since the tenancy ended. Rather, new tenants moved into the rental unit the very next day that the applicants vacated the property. The new tenants, it is noted, are not related to the respondent.

Given the above, the respondent purchaser has not established that either subsection 51(2)(a) or (b) have been met, and the applicants have proven, *prima facie*, a claim under section 51(2) of the Act. However, I must consider section 51(3) of the Act:

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.

The respondent testified that he never moved to Kelowna and into the rental unit because he had to work in his Brampton office. He did not say when this change in work circumstances occurred. And no documentary proof of this requirement to work in the Brampton office was provided. There was documentary evidence of the respondent's having to live in Brampton, but this does not give any indication of when the respondent's employer instructed him to return to the office.

What is proven, however, is that the respondent listed the rental unit (for a much higher rent than what the applicant tenants were paying) on May 23, 2021, a mere six weeks after the landlord served the Notice on the applicants. If the respondent's situation had truly changed, there is no evidence of any action taken by him to cancel the Notice.

Quite frankly, the posting of the advertisement on May 23, followed by new tenants moving into the rental unit the day after the applicants departed, strongly indicates that the respondent never had any intention of occupying the rental unit. Rather, the evidence before me leads me to conclude that while the respondent *may* have intended to occupy the rental unit, his ultimate decision was to rent out the rental unit for an extra \$400 a month. Moreover, the audacious actions of the respondent's realtor in photographing the applicant's personal space—well after the purchase had gone through—only to post them online later that day, demonstrates a deliberate choice on the respondent's part to make more money by evicting the applicants. It is this type of landlord behavior for which section 51(2) of the Act was enacted.

In short, taking into careful consideration all of the oral and documentary evidence before me, it is my conclusion that extenuating circumstances under subsection 51(3) of the Act have not been proven. As such, I find that the applicants are entitled to compensation in the amount of \$14,448.00, pursuant to section 51(2) of the Act.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the applicants were successful in their application, the respondent is ordered pay the applicants an additional \$100.00.

Pursuant to sections 51(2) and 72 of the Act the respondent is hereby ordered to pay to the applicants a total of \$14,548.00 within 15 days of receiving a copy of this Decision. A copy of a monetary order is issued in conjunction with this Decision to the applicants. This monetary order is enforceable in the Provincial Court of British Columbia.

Conclusion

The application is hereby granted, and the applicants are awarded \$14,548.00.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: August 22, 2022

Residential Tenancy Branch