Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant TT (the tenant) and landlord RM (the landlord) attended the hearing. The tenant represented tenants TY and JA. The landlord was assisted by agent AM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The landlord confirmed receipt of the tenant’s notice of hearing and evidence (the materials) and that he had enough time to review the materials.

The tenant confirmed that all the tenants received the landlord’s response evidence and that she had enough time to review the landlord’s response evidence.

Based on the testimonies offered by both parties, I accept service of the materials and the landlord’s response evidence.

The tenant served a second package of evidence on August 17, 2022 via registered mail.

Rule of Procedure 3.14 states:

> Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing**.
>
> (emphasis added)

The tenant's second package of evidence served on August 17, 2022 is excluded, per Rule of Procedure 3.14.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

Issues to be Decided

Are the tenants entitled to:

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

Background and Evidence

While I have turned my mind to the accepted 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 tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

The tenant affirmed the tenancy started on August 01, 2018 and ended on January 29, 2021. Monthly rent was $2,000.00, due on the first day of the month.

The landlord affirmed he purchased the rental unit on February 01, 2021 and received possession on that date from the seller. The rental unit was empty on February 01, 2021.

The tenants are seeking compensation in the amount of $24,000.00 (12 times the monthly rent payments):

> I believe according to the Tenancy Branch rules that the buyer of the townhouse we were living in did not act in good faith when they gave us notice to end our tenancy. At the time the new buyer said family was moving in and they were going to do some renovations while they lived there. I believe this was not the case as I visited the home a few weeks after we had to move and no one was living there. They then got new tenants before the 6 months was up.

The tenant submitted a document into evidence named “Notice_to_end_Tenancy.pdf” (the document), which is the RTB form 34: proof of service of a notice to end tenancy.

The tenant read the document during the hearing and confirmed that she did not receive a notice to end tenancy and received the document on November 29, 2020. Later the tenant affirmed that she may have received a notice to end tenancy and that she can contact the real estate agent to provide information about service of the notice to end tenancy.

The landlord affirmed that he signed a document asking the seller to serve a two month notice to end tenancy on November 28, 2020. The landlord does not know if a two month notice to end tenancy was served.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a

Notice to End Tenancy.

Section 51(2) of the Act states:

> (1)**A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property]** is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
> […]
> (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 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.
>
> (emphasis added)

Per Rule of Procedure 6.6 and section 51(2) of the Act, the tenant has the onus to prove the landlord served a 2 month notice to end tenancy under section 49 of the Act and the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 49 of the Act states:

> (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
> (a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
> (i)not earlier than 2 months after the date the tenant receives the notice,
> (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
> (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

> (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.
> […]
> (7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act states:

> In order to be effective, a notice to end a tenancy must be in writing and must
> (a)be signed and dated by the landlord or tenant giving the notice,
> (b)give the address of the rental unit,
> (c)state the effective date of the notice,
> (d)except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
> (d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
> (e)when given by a landlord, be in the approved form.

The document is not a notice to end tenancy. Based on the vague testimony offered by both parties, I find the tenant failed to prove, on a balance of probabilities, that the landlord served a 2 month notice to end tenancy pursuant to section 49 of the Act, namely form RTB 32.

As the landlord did not serve a 2 month notice to end tenancy for landlord’s use of the property under section 49 of the Act, I find the landlord does not have to pay the compensation under section 51(2) of the Act. Thus, the tenants are not entitled to the compensation they are seeking.

According to Keys v. Geary, 2021 BCSC:

> [63] Turning to my analysis, I find that the arbitrator's decision to award compensation to the Tenant under s. 51 of the RTA, based on her finding that the handwritten note was a notice under s. 49, was patently unreasonable. In my view, the arbitrator failed to consider the mandatory language in s. 49(7) which explicitly requires that a notice under that section comply with s. 52. As can be seen, s. 52 provides that in order for a notice to be effective, it must, among other criteria, state the effective date of the notice and, when given by the landlord, be in the approved form.

Pursuant to section 72 of the Act, as the tenants were not successful with their application, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application without leave to reapply.

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 24, 2022

Residential Tenancy Branch