



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNETC, FFL

Introduction

This hearing dealt with the tenants' application, filed on November 22, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$28,200.00 for compensation from the landlords or purchasers related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The first hearing on June 23, 2022, lasted approximately 33 minutes from 1:30 p.m. to 2:03 p.m. The second hearing on August 4, 2022, lasted approximately 44 minutes from 9:30 a.m. to 10:14 a.m. Both hearings lasted a total of 77 minutes.

Tenant LM left the second hearing at the outset and returned at 9:33 a.m. She called back from a separate telephone line in a separate room from the tenant, since the tenants first called into the second hearing using one telephone line on speakerphone, which was causing echoing and feedback, making it difficult for me to hear them properly. I did not discuss any substantive evidence with both parties in the absence of tenant LM at the second hearing.

Landlord TS ("purchaser TS") did not attend both hearings. Landlord BT ("purchaser"), the purchasers' agent, and the two tenants, tenant AM ("tenant") and "tenant LM," attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the purchaser, the purchasers' agent, and the two tenants confirmed their names and spelling. At both hearings, the purchasers' agent and the tenant both

provided their email addresses for me to send copies of the interim and final decisions to both parties after both hearings.

At the first hearing, the purchaser confirmed that he co-owns the rental unit with purchaser TS. At both hearings, the purchaser confirmed that he had permission to speak on behalf of purchaser TS (collectively “purchasers”). At both hearings, he stated that the purchasers’ agent had permission to represent both purchasers. At both hearings, he confirmed that the purchasers’ agent would be the primary speaker for the purchasers. At the first hearing, he provided the rental unit address. At the second hearing, the purchasers’ agent provided the rental unit address.

At both hearings, the tenant identified himself as the primary speaker on behalf of both tenants.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of any RTB hearings by any party. At the outset of both hearings, the purchaser, the purchasers’ agent, and the two tenants all separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, both parties had an opportunity to ask questions. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties confirmed that they did not want to settle this application and they wanted me to make a decision. At the second hearing, both parties requested and were given additional time to discuss settlement privately, but they did not settle this application. At the second hearing, I informed the tenants that if I dismissed their application, they would receive \$0; the tenants confirmed that they were aware of the above consequence, they were prepared to accept it, and they wanted to proceed with their application and the second hearing.

At the first hearing, the purchaser and the purchasers’ agent both confirmed receipt of the tenants’ application for dispute resolution and notice of hearing and the tenant confirmed receipt of the purchasers’ evidence. In my interim decision and in accordance with sections 88 and 89 of the *Act*, I found that both purchasers were duly served with the tenants’ application and notice of hearing and both tenants were duly served with the purchasers’ evidence.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on June 23, 2022, was adjourned to provide additional time for service of documents and a fair opportunity for both parties to review and respond to evidence. No substantive evidence regarding the merits of the tenants' application was discussed at the first hearing, only service of documents. At the first hearing, the purchasers did not receive the tenants' two evidence packages and the tenants wanted their above evidence to be considered in my final decision. By way of my interim decision, dated June 23, 2022, I adjourned the tenants' application to the second hearing date of August 4, 2022. During the second hearing, both parties confirmed their understanding of same and agreed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, the purchasers' agent and the tenant confirmed receipt of my interim decision and the notice of reconvened hearing.

At the second hearing, the purchasers' agent confirmed receipt of the tenants' two evidence packages and the tenant confirmed receipt of the purchasers' responsive evidence from July 7, 2022, in accordance with the timelines and directions set out in my interim decision.

At the second hearing, the purchasers' agent and the tenant both confirmed that they were ready to proceed with the second hearing and they wanted me to make a decision regarding this application.

At the second hearing, the tenant confirmed receipt of the former landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 22, 2021 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the former landlords' 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the second hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

At the second hearing, the purchasers' agent and the tenant agreed to the following facts. This tenancy began with the former landlord on March 1, 2017 and ended on March 27, 2021. Monthly rent of \$2,355.00 was payable on the first day of each month, to the former landlord. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenants and the former landlord returned both deposits in full to the tenants. A written tenancy agreement was signed by the former landlord and the tenants.

At the second hearing, the purchasers' agent and the tenant both agreed that the effective move-out date on the 2 Month Notice was April 30, 2021, and the reason indicated on the 2 Month Notice was:

- *All of the conditions for 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.*

At the second hearing, the tenant testified regarding the following facts. The tenants were served with a 2 Month Notice by the former landlord. The tenants received one-month free rent compensation from the former landlord, as per the 2 Month Notice. The tenants moved out of the rental unit by the end of March 2021. The first interaction that the tenants had with the purchasers was not good. The purchasers provided an email to the tenants saying that they would pursue a counterclaim for unpaid rent if the tenants stayed past the effective date of the 2 Month Notice, which never happened. The tenants were forced to move with their seven-month-old baby and two-year-old child. The 2 Month Notice says that the purchaser or spouse will live in the rental unit. The purchasers took possession of the rental unit on May 1, 2021. Four days later, the rental unit was listed for sale. The purchasers had no plan to live at the rental unit, as they just wanted to "flip" the house. The purchasers only lived at the rental unit for 11 months from May 1, 2021 to March 31, 2021. This was less than one year, as claimed by the purchasers' evidence. The tenants followed the listings of the rental unit, and it went higher over time. The tenants started their RTB claim on November 23, 2021,

after they talked to friends and family. The tenants could have stayed at the rental unit and paid rent there.

At the second hearing, tenant LM testified regarding the following facts. The tenants noticed the rental unit was for sale in November 2021. The tenants talked to the previous property manager and called the RTB, who advised the tenants to file an RTB dispute with the purchasers. The tenant sent their information to the RTB and waited for a hearing date. The purchasers' agent contacted the tenants, and the purchasers never went through the proper process. The RTB told the tenants not to communicate with the purchasers' agent, so when he requested evidence for the purchasers, the tenants were not sure what to do. The tenants sent an email to the purchasers' agent asking to meet in a neutral location with the purchasers, so the tenants could find out if the agent had permission to speak on the purchasers' behalf. The tenants found out that the purchasers sold the house and did not provide an updated address to the RTB. The tenants wanted the purchasers to sign a paper that the purchasers received the tenants' RTB evidence. The tenants cut contact with the purchasers' agent. The RTB told the tenants to keep submitting evidence. The tenants only submitted evidence to the purchasers' agent after the first RTB hearing for this application.

At the second hearing, the tenant stated the following facts. The tenants submitted their evidence through the online RTB portal. The purchasers did not follow the proper procedure. The tenants were displaced in the middle of the pandemic, and it was wrong. The purchasers did not use the rental unit to occupy, they used it to make "a few dollars." When the rental unit was first listed for sale, while the tenants were still residing there, the tenants had their first interaction with the purchasers, which was "hostile." There was no agent there with the purchasers to view the rental unit, so the tenants told them that an agent was required to be there and refused entry to view the property. The purchasers said that it did not matter, and they did not need to see the house because they were "kicking" the tenants "out" anyway. The maximum number of people allowed in the rental unit was six people during the covid pandemic, so the tenant offered and left the rental unit, so that the purchasers could conduct a walkthrough with their agent.

At the second hearing, the purchasers' agent stated the following facts. He will ignore the irrelevant submissions made by the tenants. The purchasers reject the tenants' application. The purchasers occupied the rental unit for over a year. The vacancy document submitted by the tenants from their previous property manager says that the tenants vacated the rental unit on March 27, 2021. The purchasers provided a final offer document on July 7, 2022, saying that the purchaser sold the property on April 1,

2022, to new owners. The tenants came by and saw the purchasers living at the rental unit. The purchasers occupied the rental unit and issued the proper 2 Month Notice in good faith to the tenants. The purchasers occupied the rental unit for one year, after the tenants vacated on March 27, 2021, until it was sold to new owners on April 1, 2022.

At the second hearing, the purchaser confirmed that both purchasers occupied the rental unit after the tenants vacated on March 27, 2021, and until the property was sold to new owners on April 1, 2022.

At the second hearing, tenant LM stated the following facts. The purchasers took possession of the rental unit on May 1, 2021. As per the purchasers' documents, the purchasers only lived in the rental unit from May 1, 2021 to March 31, 2022, so this was only eleven months, not 12 months, as claimed by the purchasers.

Analysis

The tenants, as the applicants, are required to present their application and evidence. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the applicants to provide evidence of their claims, in order to obtain a monetary order.

The tenants received an application package from the RTB, including instructions regarding the hearing process. The tenants served their application to the other party, as required. The tenants received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their application and when the first hearing was adjourned to the second hearing. These documents contain the phone number and access code to call into both hearings.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*

- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During the second hearing, I informed both parties that I had 30 days to issue a final decision in writing to both parties.

The tenants received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the applicants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the applicants to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenants did not properly present their application and evidence, as required by Rule 7.4 of the *RTB Rules of Procedure*, despite having multiple opportunities to do so, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*.

During the second hearing, the tenants failed to properly go through their claims, amounts, or evidence submitted in support of their application. The tenants submitted documents as evidence with their application. The tenants stated at the first hearing that they wanted their documentary evidence to be considered in my final decision. However, the tenants did not review their documents during the second hearing and did not point me to any specific documents, page numbers, provisions, or other such information. The tenants did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in this application.

The second hearing lasted 44 minutes, so the tenants had ample time and opportunity to present their application. The tenants spoke for the majority of the second hearing time, as compared to the purchaser and the purchasers' agent. I repeatedly asked both tenants if they had any other information or evidence to present, during the second hearing. I even asked the tenants questions about their testimony since it was unclear.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

In their online RTB application details, the tenants stated the following:

"We were given a two month eviction noticed due to the rental home being sold on Feb 22, 2021. We moved March 21, 2021, in our eviction notice it states that the new home owners were going to be living in the home. On May 5, 2021 the house was listed for sale, the homeowners did not in good faith abide by what was agreed upon in the notice to end tenancy. We had to leave our home of four years with two small children in the middle of a pandemic because the new homeowners wanted to flip the house."

I presume that the tenants filed this application, pursuant to section 51(2) of the *Act*, for 12 months' rent compensation of \$2,355.00, totalling \$28,200.00, because the purchasers did not use the rental unit for the purpose stated on the 2 Month Notice. At the second hearing, I informed both parties that the tenants applied for a total of \$28,300.00, including the \$100.00 filing fee, in this application. The tenants did not provide the above amounts or information during this hearing.

Section 49(5) of the *Act* states the following:

- (5) *A landlord may end a tenancy in respect of a rental unit if*
- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) all the conditions on which the sale depends have been satisfied, and*
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) 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;*
 - (ii) the purchaser is a family corporation and 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 establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the purchasers do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

- 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.*

Section 51(3) of the Act states the following:

- (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 undisputed affirmed testimony of the purchasers' agent and the tenant at the second hearing, regarding the following information. The tenants vacated the rental unit on March 27, 2021, pursuant to the 2 Month Notice. The former landlord sold the rental unit to the purchasers. The purchasers asked for vacant possession of the rental unit in order for the purchasers or a close family member to occupy the unit. The tenants received a written copy of the buyer's notice to seller for vacant possession, dated February 10, 2021 ("buyer's notice"). This notice confirms that the rental unit was sold from the former landlord to the purchasers, pursuant to a contract of purchase and sale, dated February 5, 2021 ("CPS"), and the purchasers wanted vacant possession of the rental unit, effective on April 30, 2021. I accept the copies of the above CPS and buyer's notice, provided by the purchasers as evidence. The tenants did not dispute the authenticity or contents of the above documents during the second hearing.

I accept the affirmed testimony of the purchaser and the purchasers' agent at the second hearing, that both purchasers occupied the rental unit after the tenants moved out on March 27, 2021, and until the unit was sold to new owners on April 1, 2022.

I accept the new CPS, dated December 30, 2021, provided by the purchasers as evidence, showing that the purchasers sold the rental unit, and that vacant possession was required by the new owner, effective April 1, 2022. The tenants did not dispute the authenticity or contents of the above document during the second hearing.

I accept the affirmed testimony of both tenants during the second hearing, that the purchasers occupied the rental unit for 11 months from May 1, 2021 to March 31, 2022, as per the purchasers' documentary evidence.

On a balance of probabilities and for the reasons stated in this final decision, I find that the purchasers met their burden of proof and used the rental unit for the purpose stated in the 2 Month Notice, pursuant to section 51 of the *Act*. I find that the purchasers took steps within a reasonable period after the effective date of the 2 Month Notice, for the purchasers to occupy the rental unit, and the purchasers occupied the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. I find that the tenants provided insufficient documentary and testimonial evidence to dispute the above information.

I accept the affirmed, undisputed testimony of both parties during the second hearing, that the purchasers occupied the rental unit for at least 6 months' duration after the tenants moved out and after the effective date of the 2 Month Notice. Although the purchasers sold the rental unit to a new owner, effective April 1, 2022, this is well past the 6-month duration period, after the tenants moved out on March 27, 2021, and the effective date on the 2 Month Notice of April 30, 2021.

Accordingly, the tenants' application for a monetary order of \$28,200.00 is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed 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 04, 2022

Residential Tenancy Branch