



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.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 28 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The tenant testified she sent the Notice of Hearing and Application for Dispute Resolution to the landlord by registered mail to the landlord's residence as determined by a search of the Land Titles Registry of the building in which the unit is located. The tenant mailed the documents on March 1, 2022 thereby effecting service 5 days later under section 90 on March 6, 2022. The tenant submitted a copy of the receipt and tracking number.

Further to the tenant's testimony and supporting documents, I find the tenant served the landlord on March 6, 2022 in compliance with section 89.

Preliminary Matter

The tenant TP stated she was the sole tenant and requested the name of the second tenant CKP, her mother, be removed.

Accordingly, all proceedings are amended as requested.

Issue(s) to be Decided

Is the tenant entitled to:

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

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing. Not all this evidence is referenced in my Decision. Only key, relevant and admissible information in support of the facts and my findings are referenced.

Background of Tenancy

The tenant submitted a copy of the tenancy agreement. The monthly tenancy of the unit, an apartment, began on May 1, 2020. Rent was \$1,300.00 and the tenant provided a security deposit of \$650.00 and a pet deposit in the same amount.

Two Month Notice

On May 30, 2021, the previous owner served the tenant with a Two Month Notice of that date. The tenant acknowledged service, did not dispute the Notice and moved out on the effective date, June 30, 2021.

The tenant submitted a copy of the Notice was in the standard RTB form. The Notice stated:

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 of a close family member intends in good faith to occupy the rental unit.

The Notice provided the name and address of the landlord as the purchaser.

The tenant submitted the document "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" signed by the landlord dated April 13, 2021 instructing the previous owner to request vacant possession of the building at the time of the sale. The notice names the witness GSD as one of the three named owners and stated the landlord required vacant possession of the unit.

The witness GSD provided testimony he was one of the previous owners of the building in which the unit was located. He served the tenant with the Two Month Notice and the landlord's request to provide vacant possession.

Landlord Occupation of the Unit

The tenant testified that she attended at the building in which the unit is located from time to time after she moved out to pick up her mail. In October 2021, 3 months after moving out, the tenant attended at the unit on two occasions. Having met the landlord previously, she testified the persons residing in the unit were different individuals.

From the information they received, the tenant believed the landlord evicted her, not so the landlord could move in as stated in the Notice, but in order that the landlord could rent the unit to someone else.

The tenant claimed that they are entitled to 12 months' rent as compensation as the landlord did not move into the unit.

In summary, the tenant requested the compensation as the landlord did not carry out the purpose stated in the Two Month Notice. She also requested reimbursement of the filing fee.

The tenant's claim is summarized as follows:

ITEM	AMOUNT
12 month's rent as compensation (\$1,300.00 x 12)	\$15,600.00
Filing fee	\$100.00
TOTAL TENANT'S CLAIM	\$15,700.00

Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the purchaser/landlord for use of the property.

The landlord did not attend the hearing. The tenant provided a credible and well documented claim and met the burden of proof supporting an award for the tenant in all aspects of the claim.

Section 49 – Reason for Ending a Tenancy

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

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- 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;
- 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) – Application by Tenant for Compensation

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act*. A tenant may apply for an order for compensation equivalent of 12 times the monthly rent under section 51(2) of the RTA.

There are two grounds for such an application.

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

(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.

(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 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.

(Underlining added)

In this case, the tenant claimed that steps were not taken, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy under section 51(2)(a) as neither the landlord nor a close family member occupied the unit after the effective date of the Notice.

Burden of Proof

The onus is on the landlord to prove that steps were taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

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. The Guideline states the onus is on the landlord to establish compliance with section 49, stating:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

The effective date of the Notice was June 30, 2021. Pursuant to section 51(2) of the Act, the landlord must prove that the landlord or a close family member moved into the rental unit "within a reasonable period after the effective date of the notice".

Guideline # 50 addresses the definition of “reasonable time” to accomplish the stated purpose under section 49, stating:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time.

For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.

For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Pursuant to the above, a reasonable period after the effective date of the Notice is 15 days or somewhat longer. The dictionary definition of “somewhat” is “to a moderate extent or by a moderate amount”. I find Policy Guideline #50 contemplates a reasonable period to be around 15 days and I find it should be no more than 30 days which is twice the amount stated.

I find neither the landlord nor a close family member moved into the rental unit within a reasonable period after the effective date of the Notice.

It is open to the landlord to submit that extenuating circumstances prevented the respondent from moving into the rental unit within a reasonable period after the effective date of the Notice and I find the Respondent has not done so here. The landlord has not submitted any evidence to allege or establish extenuating circumstances. The landlord submitted no documentary evidence of any repairs or renovations, dates when they were started or completed, and any reason for delay.

Findings

I find as follows.

The tenant rented the unit for \$1,300.00 a month. The previous owner issued a Two Month Notice stating the purchaser, the landlord, intended to occupy the unit and gave the tenant the supporting document, "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession".

The tenant did not dispute the Notice. The parties agreed the tenant vacated the unit on June 30, 2021.

I find the landlord failed to comply with S 51(2)(a). I find 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 as neither the landlord nor a close family member moved into the unit.

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 **\$15,600.00**. I grant an award to the tenant under this heading in this amount.

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 **\$15,700.00**:

ITEM	AMOUNT
12 month's rent as compensation (\$1,300.00 x 12)	\$15,600.00
Filing fee	\$100.00
TOTAL Monetary Order	\$15,700.00

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

Conclusion

The Application is granted. The tenant is granted a Monetary Order against the respondent in the amount of **\$15,700.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file and enforce the order in 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 29, 2022

Residential Tenancy Branch