



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAKE OKANAGAN RESORT/DHI HOLDINGS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNECT, FFT

Introduction

This hearing was convened in response to the Tenant's application for compensation "because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit/site for the stated purpose" and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on February 11, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 31, 2022 was sent to the Landlord, via registered mail, at the business address of the Resort. The Tenant submitted a Canada Post receipt that corroborates this statement.

The Agent for the Landlord stated that a colleague, who no longer works for the Landlord, forwarded a copy of the notice of these proceedings to him. He stated that the colleague did not forward the Tenant's evidence to him and he does not know if those documents were received by his colleague.

On the basis of the testimony of both parties, the Canada Post receipt, and the absence of evidence to the contrary, I find that the aforementioned documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*. The Tenant's evidence was there accepted as evidence for these proceedings.

On September 13, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

The Tenant applied for compensation “because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit/site for the stated purpose”. This is typically a claim for compensation for the equivalent of 12 month’s rent, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*.

In these circumstances, the Tenant was also applying for compensation for the last month’s free rent, pursuant to section 51(1) of the *Act*. I find that she was entitled to do so with this Application for Dispute Resolution.

Unfortunately, I did not realize the Tenant was seeking compensation pursuant to section 51(1) of the *Act* until after the teleconference was terminated. This was not an issue raised by the Tenant during the hearing, although she was given ample opportunity to raise additional issues prior to the conclusion of the teleconference.

As I was not aware the Tenant was seeking compensation pursuant to section 51(1) of the *Act*, that matter was not discussed at the hearing and I am unable to render a decision on that issue.

After becoming aware of the claim pursuant to section 51(1) of the *Act*, I considered reconvening the hearing to provide the parties with the opportunity to provide evidence in regard to that issue. I find that this would be inconvenient for both parties, as it would require them to attend a second hearing. I find that it would disadvantage the Tenant, as it would delay enforcement of the monetary Order she is entitled to pursuant to section 51(2) of the *Act*.

I find it more reasonable in these circumstances to dismiss the Tenant's application for compensation pursuant to section 51(1) of the *Act*, with leave to reapply.

In the event the Landlord does not pay compensation that is due pursuant to section 51(1) of the *Act*, presuming it has not already been paid, the Tenant retains the right to file another Application for Dispute Resolution in which she seeks this compensation. In these circumstances it is highly likely that the Landlord would be required to pay the cost of filing another Application for Dispute Resolution, presuming the Tenant applies for such compensation and is able to establish the merit of the Application for Dispute Resolution.

In the event the Landlord has not paid compensation that is due pursuant to section 51(1) of the *Act*, I strongly recommend that the Landlord do so. That would ensure that neither party needs to spend the time and effort of another dispute resolution proceeding.

For the benefit of both parties, section 51(1) of the *Act* reads:

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.

Preliminary Matter #2

The Agent for the Landlord submits that this rental unit was a commercial property and is not governed by the *Residential Tenancy Act (Act)*. He submitted no evidence to support this submission.

The Tenant stated that she was using the unit as her primary residence and that she was not conducting business in the unit.

The *Act* does not apply to commercial tenancies. Commercial tenancies are usually those associated with a business operation like a store or an office.

On the basis of the Tenant's testimony and that absence of any evidence that refutes it, I find that this is a residential, rather than a commercial tenancy, and that the *Act* applies.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenant stated that this tenancy began in May of 2020. The Agent for the Landlord stated that it began on May 14, 2020.

The Tenant stated that the rental unit was vacated on October 01, 2021. The Agent for the Landlord stated that he thinks it was vacated on September 30, 2021.

The Tenant and the Agent for the Landlord agree that the monthly rent at the end of the tenancy was \$1,200.00.

The Agent for the Landlord stated that he has a note from a colleague that indicates the Two Month Notice to End Tenancy for Landlord's Use, dated September 10, 2022, was served to the Tenant by email on September 10, 2022.

The Tenant stated that on September 17, 2022 she found the Two Month Notice to End Tenancy for Landlord's Use, dated September 10, 2022, posted on the door of the rental unit.

The Tenant submitted the first page of the Two Month Notice to End Tenancy for Landlord's Use. The Landlord submitted the entire Two Month Notice to End Tenancy for Landlord's Use, however it was not accepted as evidence for these proceedings.

At the hearing the Agent for the Landlord stated that he was looking at a copy of the Two Month Notice to End Tenancy for Landlord's Use and that it declares the tenancy is ending because the unit will be occupied by the landlord or the landlord's spouse AND the landlord is a family corporation and a person owning shares in that corporation or a close family member of that person will be occupying the unit.

The Tenant stated that she does not have a copy of the Two Month Notice to End Tenancy for Landlord's Use with her but she recalls that the Notice declared the tenancy was ending because the unit was being sold.

The Tenant was asked to look at the letter she submitted in evidence, dated September 08, 2021, which declared that the owner of the unit will be living in it, effective December 15, 2021. Upon reviewing this letter, she agreed that the Two Month Notice to End Tenancy for Landlord's Use may have declared that the tenancy was ending because it will be occupied by the landlord or the landlord's spouse.

The Tenant and the Agent for the Landlord agree that the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by December 01, 2022.

The Agent for the Landlord stated that:

- the company that owns this resort (DHIHI) is owned by a husband and wife;
- the head office for DHIHI is in another community;
- when the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant, the Landlord intended to have company employees reside in the unit when they were in the community for business purposes;
- for a period of time an employee of the company stayed in the unit approximately once per month;
- the rental unit was sold on April 28, 2022.

The Tenant and the Agent for the Landlord agree that the rental unit was listed for sale prior to the Tenant being served with a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that:

- she was interested in purchasing the rental unit;
- in September of 2021 she was told there was a "sale pending";
- after she vacated the rental unit the listing real estate agent told her real estate agent that the unit was "vacant and available"; and
- she does not know when the unit was eventually sold.

Analysis

On the basis of the evidence before me, I find that this tenancy began in 2020; that it

ended on September 30, 2021 or October 01, 2021; and that the rent was \$1,200.00 at the end of the tenancy.

On the basis of the evidence before me, I find that in September of 2021 the Tenant received a Two Month Notice to End Tenancy for Landlord's Use, dated September 10, 2021. I find that this Two Month Notice to End Tenancy for Landlord's Use was served pursuant to section 49 of the *Residential Tenancy Act (Act)*.

On the basis of the testimony of the Agent for the Landlord, I find that the Two Month Notice to End Tenancy for Landlord's Use declares the tenancy is ending because the unit will be occupied by the landlord or the landlord's spouse AND the landlord is a family corporation and a person owning shares in that corporation or a close family member of that person will be occupying the unit. As the Agent for the Landlord had the Two Month Notice to End Tenancy for Landlord's Use with him at the time of the hearing, I find his testimony is highly reliable. I also find his testimony is corroborated by the letter dated September 08, 2021.

On the basis of the undisputed evidence, I find that the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by December 01, 2022.

Section 51(2) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent.

On the basis of the testimony of the Agent for the Landlord, I find that after the unit was vacated by the Tenant and until the unit was sold on April 28, 2022, the unit was used to provide temporary accommodation to employees of the company owned by the Landlords. I find that the Landlord submitted no evidence to establish that those company employees were the Landlords, a person owning shares in the Landlord's company and/or close family members of the Landlords/person owning shares in the company.

As the Landlord has failed to establish that the rental unit was occupied by the Landlords, a person owning shares in the Landlord's company, or a close family

member of a person owning shares in the company, I find that the Landlord is the subject of the penalty imposed by section 51(2)(a) of the *Act*. I therefore find that the Landlord must pay the Tenant \$14,400.00, which is the equivalent of 12 month's rent.

I note that the Landlord did not present any extenuating circumstances that would cause me to conclude that extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and from 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 find that the Tenant's application has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$14,500.00, which includes \$14,400.00 compensation pursuant to section 51(2) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$14,500.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 14, 2022

Residential Tenancy Branch