Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented by their counsel, MG, in this hearing. LY, daughter of the landlord, also appeared. ES appeared for the tenants, and was assisted by their son, BS. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

All parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. All parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application.

The tenants expressed concern that they had only received the landlord's evidentiary materials the week before the hearing, and although they had an opportunity to review the materials, the tenants did not have adequate time to provide a response and serve this on the landlords. The tenants confirmed that they had uploaded their response as evidence the day prior to the hearing, but did not serve the documents on the landlords. After discussing the matter with both parties, the landlord and their counsel allowed the

tenants to send the package by way of email to the parties to review during the hearing. After reviewing the material, counsel for the landlord confirmed that they had sufficient time to review the materials, and took no issue with the admittance of this late evidence. After both parties confirmed that they did not take issue with the admittance of each other's evidentiary materials, and confirmed that they wished to proceed with the hearing as scheduled, the hearing proceeded.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2018, and continued on a month-to-month basis after September 1, 2020 until the tenancy ended on May 31, 2021. Monthly rent was set at $3,400.00 payable on the first of the month. A security deposit of $1,700.00 was paid for this tenancy.

On February 21, 2021, the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the 2 Month Notice was April 30, 2021, but both parties mutually agreed that the tenants could move out on May 31, 2021, which the tenants did. The daughter of the landlord, LY, who started her graduate studies in the fall of 2020, wanted to move back into the family home as she was able to complete her coursework online.

The tenants filed this application for compensation after they had discovered that the home was re-rented within six months of the effective date of the 2 Month Notice. The landlord does not dispute that the home was re-rented as of September 4, 2021 when LY moved back to attend school in person. LY argued that their original intention was always to occupy the home, but the circumstances had changed in an unforeseeable way that forced LY to move back and re-rent the home instead of occupying it as LY wanted to. LY testified that she had moved in on June 30, 2021, and moved out on September 4, 2021 as demonstrated by the one way tickets in evidence. LY confirmed

in the hearing that the home was now re-rented to a friend for $4,000.00 per month, which included utilities.

The landlord provided correspondence from the university to support that that classes were offered in an online format until things changed on August 26, 2021, when the university confirmed that students would be expected to attend classes in person in September 2021, and that online classes were no longer an option. LY testified that since starting their graduate studies, they had always and only attended classes online, and LY was completely shocked to find out that classes would be held in person as of September 2021. As LY wrote in their statement, “the change to in-person class attendance was a surprise to me and I had no warning about this change which I do not believe that I could have anticipated”. The landlord argued that the compensation should not be payable due to the extenuating circumstances that prevented LY from occupying the home for the full six months.

Analysis

Section 51(2) of the *Act* reads in part as follows:

> *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*
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> > *(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 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.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the *Act.*

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

• A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
• A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
• A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
• A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:
• A landlord ends a tenancy to occupy the rental unit and then changes their mind.
• A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
• A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had re-rented the suite as of September 4, 2021. In consideration of Policy Guideline #50 and the definition of "extenuating circumstances", I find that the reason provided by the landlord fail to meet the criteria for "extenuating circumstances".

Although I am sympathetic towards the fact that the LY had started her graduate studies in 2020, during a time of uncertainty and constant change, I am not satisfied that the circumstances that took place that lead to LY's change of plans meet the definition of "extenuating circumstances" for the purposes of the fulfilling one's obligations when ending a tenancy under section 49 of the *Act.* Although the format of the course delivery for LY's first year in the graduate program was completely online, I find that the university had never formally or permanently designated the graduate program as an online only one. The university normally had delivered their courses in person, but had to make a temporary change to adhere to public health measures during the pandemic by allowing students to attend classes online. This fact is supported in the landlord's own evidence such as communication and updates from university about "winter grad course delivery method" and ongoing updates from the Dean such as the email dated July 28, 2021 which references a "positive momentum around the reopening of ---- (province withheld for privacy reasons) and our return to campus this fall".

Although LY claims to have been surprised when LY received the email on August 26, 2021 informing students that classes would be resuming on an in person basis, I do not find that this update to be unexpected, nor unanticipated. I also do not accept LY's assertion that there was inadequate or no warning about this change. As demonstrated by the landlord's own evidence, and the additional updates provided in the tenants' evidence, the university provided students with regular updates that referenced "the changing public health landscape" and a return to the normal format of in-person learning, once Public Health permitted the university to do so. I find that the evidence clearly shows that LY ought to have known that on February 21, 2021, the date the tenants were served with the 2 Month Notice, that the university was assessing the "public health landscape" on a regular basis, and would eventually return to in person learning. Although there was no confirmed date for the transition back to in person learning, I find that LY should have known that the situation was rapidly changing, and that the accommodations made by university such as online learning, were temporary ones.

Although I believe that LY did have the genuine intention of moving back to occupy the home longer than the two months, I am not satisfied that the reason provided for re-renting the home meet the definition of extenuating circumstances. I find that LY took a risk in assuming that classes would remain online for a longer duration. Although the situation was definitely uncertain, I find that LY should have been able to anticipate on February 21, 2021 that the circumstances could change by April 30, 2021, or before October 31, 2021, to the extent that the university would resume classes on an in-

person basis. In this case, LY happened to be mistaken in her assumption, and classes did resume in September 2021, well before the six months was over. I do not find this mistake amounts to an "extenuating circumstance", and therefore I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance.

In calculating the compensation that is due to the tenants, I note that the amount does exceed the small claims limit of $35,000.00. However, as noted in Policy Guideline #27 as reproduced below, compensation under section 51(2) of the *Act* is exempt from this limit, and Arbitrators have no authority to alter this amount or consider mitigation. Accordingly, I order that the landlords pay to the tenants the equivalent of twelve times the monthly rent as required by section 51(2) of the Act, which is $40,800.00.

Small Claims Limit
Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently $35,000.

If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

If the claim is for compensation under section 51(2), 51.3 or 51.4 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration. They are not usually complex. See Policy Guideline 50: Compensation for Ending a Tenancy for information about these compensation provisions.

As the tenants were successful in their claim, I allow them to recover the filing fee.

Conclusion
I issue a $40,900.00 Monetary Order in favour of the tenants for compensation under section 51(2) of the *Act,* and for recovery of the filing fee.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: September 28, 2022

Residential Tenancy Branch