Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On February 7, 2022, the Tenants made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was set down to be heard on September 20, 2022, at 1:30 PM.

Both Tenants attended the hearing, and Landlord P.S. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant J.H. advised that they served a separate Notice of Hearing and evidence package to each Landlord by registered mail on February 16, 2022. As well, Tenant N.H. advised that they did not check to see if the Landlords could access their digital evidence; however, she stated that they included a copy of a transcript of that recorded conversation. A copy of this transcript was not submitted to the Residential Tenancy Branch as documentary evidence. The Landlord confirmed that they received the Notice of Hearing and evidence packages, but she stated that she was not aware of who the Tenants spoke to in this transcript.

Based on this undisputed evidence, I am satisfied that the Landlords were duly served the Tenants' Notice of Hearing and evidence packages. As this documentary evidence was served to the Landlords in compliance with the timeframe requirements of Rule

3.14 of the Rules of Procedure (the "Rules"), I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Tenants did not check to see if the Landlords could access this digital evidence pursuant to Rule 3.10.5 of the Rules, and as the Tenants did not provide a copy of this transcript to the Residential Tenancy Branch, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord confirmed that they did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy originally started with a different landlord on June 15, 2019, that the Landlords subsequently purchased the rental unit, and that the tenancy ended on November 10, 2021, when the Tenants gave up vacant possession of the rental unit. Rent was established in the amount of $1,850.00 per month, and was due on the first day of each month. A security deposit in the amount of $925.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Landlord confirmed that they purchased the rental unit on October 26, 2021, and that they took possession of the rental unit on January 4, 2022. She advised that the purchase of this property was a "rush buy" and that she docu-signed all of the sale documents presented to her by her realtor without fully reading or understanding them. However, she did confirm that she found a copy of the Notice within the sale documents. She stated that she was advised by her realtor that the seller had informed them that the Tenants said that they were moving out of the rental unit. She read

directly from the sale documents, and confirmed that they stated that all of the conditions of the sale of the rental unit were satisfied, and that the Landlords asked the seller in writing to serve the Notice on the Tenants because they intended in good faith to occupy the rental unit.

She confirmed that the Notice was served; however, she stated that she did not "know it was a rule" that they could not re-rent the unit, and it is her position that this was a mistake. She acknowledged that they re-rented the unit in mid-January 2022. She then testified that her brother wanted to move into the rental unit, but he could not.

N.H. then read directly from the contract of purchase and sale documents that were included with the Notice, and confirmed exactly what the Landlord read earlier. This reiterated the information that the Landlords signed documents confirming that all of the conditions of the sale of the rental unit were satisfied, and that the Landlords asked the seller in writing to serve the Notice on the Tenants because they intended in good faith to occupy the rental unit. She advised that they received the Notice on October 28, 2021, and that they gave their 10 days' notice to end their tenancy early to the seller, on October 31, 2021, pursuant to Section 50 of the *Act*.

The Landlord expressed how unfair she believed it was because they were not aware of their rights and responsibilities under the *Act*, and she mentioned that her brother was supposed to move into the rental unit. She was invited to make submissions with respect to any extenuating circumstances that may have prevented them from using the rental unit for the stated purpose, but she stated that she did not want to divulge that information. However, she then advised that the other Respondent was her mother and that they were both co-owners of the rental unit. She testified that it was their plan to have her brother move into the rental unit to support him, and that this plan was initiated in September or October 2021, prior to purchasing the rental unit. She stated that there was a problem with her brother's health condition in December 2021 that then rendered him unable to move into the rental unit. She advised that if they knew of the requirement to move in based on the Notice, they would have "made it work".

In response to these submissions, J.H. advised that they received a text message from the Landlord on February 27, 2022, after the Landlords were served the Notice of Hearing packages. He read from the text message and pointed out specific excerpts where the Landlord stated that she was "confused as to why [she] received a 'tenancy dispute notice'" and that "we had purchased the property as a rental property. We were never going to live in it ourselves." This text message was submitted as documentary evidence to support their position that the Landlords never planned to use the property for the stated purpose on the Notice.

The Landlord elected not to make any submissions in response.

A copy of the Notice was submitted as documentary evidence. The reason for service of the Notice was because “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 or a close family member intends in good faith to occupy the rental unit.” The effective end date of the tenancy was noted as January 1, 2022, on the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords’ right to end a tenancy in respect of a rental unit when the Landlords enter into an agreement in good faith to sell the rental unit, where all of the conditions on which the sale depend have been satisfied, and where the Landlords have asked the seller, in writing, to give notice to end the tenancy because the Landlords, or a close family member of the Landlords, intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by that landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. While the Landlord claimed not to have realized that the Notice was served as part of the contract and purchase of sale of the rental unit, I find it important to note that the Landlord should be doing her due diligence, especially when it comes to a purchase of such great expense and significance, to read and understand all documents before hastily signing them. I also note that there were two Landlords involved in this purchase, so either of them could have taken on the responsibility of reading and understanding any implications when making this purchase. Given that the Landlord acknowledged that this was a “rush buy” and that she did not bother reading all of the documents prior to docu-signing them, it is clear that they took little precaution, or obtained insufficient representation, when purchasing the rental unit.

Regardless, when reviewing the consistent and undisputed evidence before me, I am satisfied that all of the conditions on which the sale depends have been satisfied and that the Landlords asked the seller, in writing, to give the Notice because they, or a close family member of the Landlords, intended in good faith to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated October 28, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) 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.*
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> *(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*
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> > *(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.*

At the time the Notice was served, the Landlord attempted to suggest that the intention was for her brother (the other Respondent's son), to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlords, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "the implication is that 'occupy' means 'to occupy for a residential purpose.' (See for example: Schuld v. Niu, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member,

intend in good faith to use the rental unit as living accommodation or as part of their living space."

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
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> A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was because all of the conditions on which the sale depends have been satisfied, and the Landlords have asked the seller, in writing, to give the Notice because they, or a close family member of the Landlords, intend in good faith to occupy the rental unit. However, as the Landlord acknowledged that neither of the Landlords, nor a close family member, ever occupied the rental unit after the effective date of the Notice, but rented it out in January 2022 instead, I am satisfied that the rental unit was not used for the stated purpose for at least six months from the effective date of the Notice, as required by the *Act*.

As such, the only issue I must consider now are extenuating circumstances. I note that Policy Guideline # 50 outlines the following about extenuating circumstances:

> 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.
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> 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.

The consistent and undisputed evidence before me is that the effective date of the Notice was January 1, 2022, and I am satisfied that neither the Landlords, nor a close family member, ever occupied the rental unit after the effective date of the Notice. While the Landlord advised that her brother was to move in, but he was unable to due to a change in his personal health condition, thus creating an extenuating circumstance, I note that the Landlords received the Notice of Hearing packages in February 2022, and had approximately six months to submit any documentary evidence to corroborate the alleged extenuating circumstance. However, the Landlords have not submitted any documentary evidence to support the legitimacy of these submissions brought forth during the hearing.

Furthermore, after making these submissions, the Tenants advised of the text message sent to them by the Landlord on February 27, 2022, where the Landlord stated that they “purchased the property as a rental property. We were never going to live in it ourselves.” I note that this text message directly contradicts the Landlord’s submissions of the existence of an extenuating circumstance. I also note that after hearing this submission from the Tenants, the Landlord chose not to rebut this, respond, or make any further submissions. Given that this text message entirely opposes what the Landlord testified to in the hearing, I find that this inconsistency causes me to question, and to be skeptical of, the credibility and truthfulness of the Landlord on the whole.

In assessing the totality of the evidence before me, I do not find that the Landlord has established that there were any extenuating circumstances that prevented the Landlords from using the property for the stated purpose for at least six months from the effective date of the Notice. Ultimately, I am satisfied that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. As such, I grant the Tenants a monetary award in the amount of **$22,200.00**.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

12 months' compensation	$22,200.00
Filing fee	$100.00
TOTAL MONETARY AWARD	**$22,300.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$22,300.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 21, 2022

Residential Tenancy Branch