



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 the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, BK and LYK, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant served the Notice of Dispute Resolution Proceeding package and evidence for this hearing to the Landlord by posting the notice on their door on January 27, 2022 (the "NoDRP package"). The Landlord confirmed receipt of the package. I find that the Landlord was deemed served with the documents for this hearing three days after posting, on January 30, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

The Landlord served the Tenant with their evidence on May 4, 2022 by posting the package on the Tenant's door. The Tenant confirms receipt of the Landlord's evidence

package. I find the Landlord's evidence was deemed served on the Tenant on May 7, 2022 according to Sections 88(g) and 90(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2016. The fixed term ended on June 30, 2017, then the tenancy continued on a month-to-month basis. Monthly rent was \$910.00, and the tenancy agreement stipulated that rent was payable on the 28th day of each month. A security deposit of \$430.00 was collected at the start of the tenancy and was returned to the Tenant. The tenancy ended on July 31, 2021.

On May 19, 2021, the Tenant received the Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice"), which had an effective date of July 31, 2021. The reason to end the tenancy was because a child of the Landlord or the Landlord's spouse will be occupying the unit. The Tenant said he had spoken to other tenants who resided in the residential property who had also received notices to end tenancy. The Tenant stated there are at least four rental units in the house. The Tenant said he was told that the Landlords wanted the entire house for their own use. The Tenant did not dispute the Two Month Notice.

The Tenant testified that within a month or two he found a shipping label in the back of the house, indicating that units had been rented to other tenants. The named person on the label did not have a name that was of the same cultural background of the Landlords. He stated at that point, he realized the Landlords had lied to him.

The Tenant visited the rental unit on August 22, 2021 inquiring about any missed mail items. He met with the Landlord mother who showed him the rental unit, that it was empty and that no one was living in it. The Tenant said it had not yet been painted.

The Tenant argues that the Landlords' rental units have been listed to rent on websites used by people to find places to rent. Also, the Tenant argues that the Landlords' house has gone on the market at least one time.

The Landlords are a mother and son team, and the residential property belongs to the mother and father. The Landlord son testified that his father has cancer, and he was moving into the house to help his mother and father with his father's care. The Landlord son said that him and his wife are trying to have a baby, but the Two Month Notice specifies a child of the Landlord will be occupying the rental unit, and that meant the Landlord son. The Landlord son testified that he is the Landlord's child.

The Landlord son confirmed that there are four suites in the residential property. He testified that prior to moving into the rental unit, he was with his wife in a nearby city. He said him and his wife moved into the rental unit in late August 2021 because there was *"a lot of work that needed to be done"* to get the space ready for them to live in. The Landlord son stated he still lives in the rental unit, and he has uploaded evidence taking pictures and videos of the basement suite, him using the personal space, studying, waking up, working on his school work, and coming home from work.

The Landlord son testified that the name found on the shipping label at the back of the house is another tenant in the residential property. He stated that that person lived in the residential property before the Tenant lived there.

The Tenant is seeking 12 month's compensation as he submits the Landlord did not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice. The Landlords submit that the rental unit has been used as stated in the Two Month Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

RTB Rules of Procedure 3.7 specify how evidence must be organized. It states:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

The Landlord son provided a usb stick to the Tenant containing all his evidence. The documents contained on the usb stick were not labelled in an identical fashion as the documents that were uploaded on the RTB website. The Landlord son renamed the documents prior to uploading them on the RTB website. I find that by renaming the RTB documents as something different than what the Tenant received, this left the Tenant at a disadvantage in being able to identify the few documents that the Landlord son referred to in his submissions. I decline to consider the documentary evidence uploaded by the Landlord son as I find it is not readily identifiable, organized, and clear. I have considered all the Landlords' verbal evidence given in the hearing.

Section 51 of the Act is the relevant section of the legislation for this matter. It states:

Tenant's compensation: section 49 notice

51 (1) *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.*

(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of*

section 50 (2), that amount is deemed to have been paid to the landlord.

- (1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*
- (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 the landlord or purchaser, as applicable, does not establish that*
- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
 - (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

RTB Policy Guideline #50-Compensation for Ending a Tenancy addresses issues for resolving disputes of when a landlord does not fulfill their legal obligations after issuing a section 49 notice (e.g., the Two Month Notice). Policy Guideline #50 states:

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy under Section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months. The Landlord son said him and his wife moved into the rental unit to assist his parents while his father was undergoing cancer treatment. The Landlord son did not provide any evidence, affidavits or witness statements attesting to that fact that this kind of medical treatment was happening in his family's life.

The Tenant vacated the rental unit on July 31, 2021 and visited the rental property on August 22, 2021 to inquire whether any mail had been delivered for him. The Landlord mother showed him the rental unit. The suite was empty, and the Tenant noted it had not been painted.

The Landlord son said there was lots of work that needed to be done before they moved in, which included painting; however, the Landlord son did not provide evidence (e.g., invoices, sales receipts for materials or work orders) attesting to this work which I expect would have come with a cost, but would have been long completed by the time the hearing was held. The Landlord son's testimony about his move-in to the rental unit was vague, and I find would have been more significant if there was a lot of work that was needed to be completed prior to move in. I note the absence of testimony from the Landlord son's wife as being problematic.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their claim and their claim fails. I find the Landlords have not proven on a balance of probabilities that they accomplished the stated purpose for ending the tenancy pursuant to the Two Month Notice for ending the tenancy for Landlord's Use. The Tenant is entitled to compensation in the amount of **\$10,920.00** pursuant to Section 51(2) of the Act.

As the Tenant is successful in his claim, he is entitled to recovery of the **\$100.00** application filing fee.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$11,020.00. 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 of British Columbia 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 Act.

Dated: September 13, 2022

Residential Tenancy Branch