



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDCT**

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.

JSM attended as agent for his brother (“the landlord”). At the beginning of the hearing, JSM stated his name was “JS”. Upon questioning by the tenant, the agent acknowledged his full name was JSM and provided two different spellings for the last name, both of which are referenced on the first page.

Both tenants attended and are referenced in the singular.

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

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

Preliminary Issue – Service

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution.

An issue arose over the subsequent submission by the tenant of a video recording.

The tenant submitted a video recording of attending at the unit on December 26, 2020, the month after they moved out. The tenant testified they sent the video on a USB to the landlord at the landlord's address by registered mail and the mail was returned to them unclaimed. The tenant did not provide evidence of the mailing such as a copy of the receipt of the tracking number. The tenant did not make a subsequent effort to serve.

The landlord denied notification of any registered mail and objected to the inclusion of the video as evidence.

The RTB Rules set out the procedure for submission of digital evidence by the tenant. The tenant must provide a printed description of the digital device on RTB form # 43. The tenant must serve the tenant with the digital evidence. Before the hearing, the tenant must confirm with the landlord that they can access the files.

In this case, the tenant did not comply with the Rules as the tenant did not submit RTB # 43 and did not confirm access to the files with the landlord.

Considering the evidence and the Rules, I therefore will not consider the video submitted by the tenant in my Decision.

Preliminary Issue – Previous Adjournment and Subsequent Submission of Evidence

This is a continuation of a hearing which began on May 16, 2022. At that time, an agent attended for the landlord and explained the landlord was ill. They requested an adjournment.

Accordingly, the hearing was adjourned by Interim Decision of May 17, 2022, to this date.

The Interim Decision provided that neither party could submit additional evidence.

Both parties acknowledged receipt of the Notice of Reconvened Hearing and Interim Decision.

On September 9, 2022, the landlord submitted 16 pages of documents to an RTB office as the website did not permit submission of further evidence.

As the landlord's documents were not submitted in compliance with the Interim Decision, those documents will not be considered in my Decision

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The landlord did not submit any documentary evidence. Nevertheless, the landlord provided considerable testimony with which the tenant disagreed. Not all asserted facts and arguments referenced in the 60-minute hearing are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant filed this application on September 28, 2021. They claimed they are entitled to compensation of 12 months rent of \$12,000.00 as the landlord's parent did not move into the unit as stated in the Two Month Notice.

The agent at the hearing testified he is the landlord's brother. The agent testified their mother moved into the unit as soon as the tenant moved out and lived there for over a year, vacating on December 31, 2021. The landlord requested the application be dismissed. The landlord submitted no documents in support of the assertion their mother occupied the unit.

A copy of the tenancy agreement was not submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	2007 (13-year tenancy)
Fixed Term End Date	Fixed term, then monthly
Vacancy Date	November 15, 2020
Rent payable on first of month	\$1,000.00

Security deposit	Returned at end of tenancy
One month compensation	Provided

The parties agreed the landlord issued a Two Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") – copy submitted in RTB form
Date of Notice	August 16, 2020
Effective Date of Notice	October 31, 2020
Date and Method of Service	August 16, 2020, personal service – Tenant acknowledged service
Move out	November 15, 2020 (extended by agreement between parties)
Reasons for Issuance	Occupation by father or mother of landlord or landlord's spouse
Application for Dispute Resolution filed - date	September 28, 2021

Before the effective date of the Notice, the parties agreed the tenant could live in the unit an extra two weeks because they had difficulty finding an affordable place to live.

The tenant testified they received one month's rent as compensation as required under the Act. Their security deposit was returned.

The tenant testified as follows. The building in which the unit was located contained 4 apartments. When the landlord issued the Two Month Notice, the landlord informed the tenant that everyone was being evicted. At the hearing, the landlord testified that only the tenant was evicted. The tenant testified there are 14 steps leading to their unit, and they were surprised the elderly parent would decide to live in their unit. In any event, the tenant did not dispute the Notice.

The tenant testified they had met the mother of the landlord. She did not move into the unit as they met the occupant on December 26, 2022.

The tenant testified as follows. They are mother and adult son. They both attended at the unit on December 26, 2022, to greet the landlord and his family and offer best wishes for the season. They were surprised when an unknown male occupant opened the door with a baby visible in the background. The unit was fully furnished.

The tenant testified to the ensuing encounter. The tenant said they had a relaxed conversation with the occupant during which they picked up the tenant's cat which was outside and returned it to him. The occupant said did not know the landlord. The occupant stated they had moved in a couple of weeks earlier and were the new tenants. The tenant asked if there was any mail for them, and the occupant stated there was not. The encounter lasted a few minutes.

The tenant testified that they believe the landlord did not issue the Notice in good faith. They believe he rented the unit to someone else and his mother never occupied the unit.

The landlord testified as follows. His mother moved into the unit as soon as the tenant moved out and lived there continuously for over a year, vacating December 31, 2021. The landlord stated they have subsequently sold the building.

The landlord had no explanation for the tenant's description of attending the unit on December 26, 2022 except to say repeatedly that they were "liars".

Analysis

The tenant seeks 12 months rent as compensation in the amount of \$10,000.00 as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

Credibility

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the tenant LM's testimony as to the encounter with an occupant in the unit who was not the landlord's mother on December 26, 2020, is in harmony with that of the tenant CG. Both tenants provided similar testimony regarding the event. I find each of the tenants provided credible testimony in all aspects.

The landlord's denial, unsupported by any witness or documentary evidence, provides a different version. I find his testimony does not have a ring of truth. I conclude the landlord's testimony is not reliable or credible particularly as there was no supporting evidence. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

Burden of Proof

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove any alleged extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When 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 position. Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find the landlord has not met the burden of proof. My findings are set out below.

The Act

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

Section 49(4) states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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) 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.

(Underlining added)

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 and a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given.

Landlord's Submissions

The landlord asserted the landlord's mother moved into the unit as soon as the tenant moved out. However, the landlord did not submit a single document in support of this assertion. The landlord called no witnesses.

I have found the tenant's testimony compelling and believable. I find it is unlikely the parent occupied the unit at all after the tenant moved out. I accept the tenant's conclusion as reasonable that an occupant other than the parent moved in.

Summary

I find the landlord failed to comply with section 51(3) and did not use the rental property for the reason stated in the Two Month Notice. I find the landlord has not met the onus of proof. I find that the parent did not occupy the unit for a six-month duration within a reasonable period after the tenant moved out or live in the unit for at least 6 months within a reasonable period after the unit was vacant.

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 \$12,000.00. I grant an award to the tenant under this heading of \$12,000.00.

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 \$12,100.00.

Conclusion

The tenant is granted a Monetary Order in the amount of \$12,100.00.

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

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*.

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Dated: September 13, 2022

Residential Tenancy Branch