



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation due to the Landlord (the "Purchaser") having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Purchaser pursuant to section 72.

The Purchaser and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Purchaser was represented by his legal counsel, MG, and assisted by an interpreter, HN.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

MG confirmed that the Purchaser received the Tenants' notice of dispute resolution proceeding package and evidence (collectively, the "NDRP Package"). I find the Purchaser was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenants confirmed receipt of the Purchaser's evidence for this hearing. I find the Tenants were served with the Purchaser's evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51(2) of the Act?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on August 15, 2019 with the previous owners of the rental unit and ended on November 1, 2021. Rent was \$2,500.00 per month. The Tenants submitted a copy of the latest tenancy agreement into evidence.

The Tenants also submitted a copy of the Two Month Notice into evidence. The Two Month Notice states that "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." Attached to the Two Month Notice is a fully executed contract of purchase and sale dated July 19, 2021.

Counsel for the Purchaser referred to the following documents submitted into evidence by the Purchaser:

- Signed statement of the Purchaser dated August 25, 2022
- Signed statement of the Purchaser's girlfriend YN dated August 25, 2022
- Signed statement of YN's employee MTN dated August 25, 2022
- FortisBC bills dated November 16, 2021, December 8, 2021, and January 14, 2022
- Email dated December 13, 2021 from BC Hydro
- Shaw invoices dated February 1, 2021 and February 12, 2022
- Municipal statement of account dated November 10, 2021

In his written statement, the Purchaser explained that he took possession of the rental unit on November 2, 2021. The Purchaser stated he is divorced, and that his children reside in a neighbouring city on the island. The Purchaser stated that it was his intention to live in the rental unit and for his children to stay with him on weekends.

The Purchaser stated he removed carpeting, installed laminate flooring, and painted the interior of the rental unit to make it ready for himself and his children. The Purchaser stated he set up BC Hydro, FortisBC and Shaw services for the rental unit in his name.

The Purchaser stated it was his intention to continue living in the rental unit and never intended to move to the mainland until his girlfriend, YN, asked him to help her work at her business. The Purchaser stated that in early February 2022, YN informed the Purchaser that YN's manager, MTN, had gone abroad and was not expected to return until April 2022 and that YN "desperately needed help" at the business that she owns.

The Purchaser stated he did not know how long he would be away from the rental unit and did not want to leave it vacant, so he arranged for a property management company to help with the rental. The Purchaser stated he moved in with YN in late February 2022, where he continues to reside. The Purchaser stated he has continued working at YN's business since February 2022. The Purchaser stated the business is "very busy" and that he believes his help was "necessary for the continued operation of the business".

In her written statement, YN stated that she has been operating her business for about 12 years. YN stated that her business is "very busy" and that she relies on her staff to operate the business, which is open very late into the night. YN stated that MTN has been the manager of her business for about 3 years, and that it is very difficult for her to operate her business when he is away. YN stated that MTN told her in December 2021 that he was going abroad for one month. YN explained that in January 2022, MTN told YN he was getting married and would be away until at least April 2022.

YN indicated in her written statement that it was very difficult for her to operate the business without MTN. YN stated she called the Purchaser to come help with her business. YN confirmed the Purchaser has been helping with her business since late February 2022. YN stated that she needed the Purchaser's help to do heavy lifting and other tasks for her business. YN stated she did not know MTN would be away from work for 4 months and required help from the Purchaser "unexpectedly and on an emergency basis". YN explained that she is a single mother and has a child attending

high school. YN stated she does not like to be away from home in the evenings, and it is important for her to have reliable staff.

In his written statement, MTN confirmed that he is the manager of YN's business and had expected to be away for 1 month. MTN stated he contacted YN about extending his stay abroad in December 2021 due to getting married. MTN stated that he returned to work on May 1, 2022.

Counsel for the Purchaser submitted that the Purchaser had been living on the island for 3 years and had intended to live in the rental unit with his children visiting on weekends. Counsel submitted that the Purchaser had to help YN in an unanticipated emergency, which constitutes extenuating circumstances for the Purchaser.

During the hearing, the Tenants testified that they noticed a listing for the rental unit on January 27, 2022. The Tenants testified that on February 8, 2022, they attended a showing of the rental unit with the Purchaser's rental agent, BA. The Tenants testified they asked BA to talk to the Purchaser about the Tenants moving back into the rental unit, but BA refused. The Tenants testified that on February 8, 2022, the rental unit was completely empty except for a piano, as well as a barbeque on the deck.

The Tenants testified they had only moved out of the rental unit for 3 months at that time and really wanted to move back. The Tenants testified that they were staying "in the block up the road" from the rental unit, and that they do not believe the Purchaser was staying at the rental unit.

The Tenants submitted a copy of the listing saved on February 8, 2022, which shows the rental unit being advertised for \$2,800.00 per month.

During the hearing, the Purchaser testified he did not recall the exact date that the listing was posted, but that it was after YN had asked him for help. The Purchaser testified that he put the furniture in the workshop because he was renovating the rental unit. The Purchaser testified he slept on a mattress in a room overlooking the street during the renovations.

Analysis

1. Are the Tenants entitled to compensation under section 51(2) of the Act?

Section 49(5) of the Act permits a landlord to end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and 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 49(1) defines a “purchaser” for the purposes of section 49(5) to be a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

In this case, I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content under section 52 of the Act. I find the Tenants’ tenancy was ended on November 1, 2022 pursuant to the Two Month Notice and in accordance with section 49(5) of the Act. I am satisfied that the Purchaser is a purchaser as defined under section 49(1) of the Act for the purposes of sections 49(5) and 51(2) of the Act.

In this application, the Tenants seek compensation of 12 months’ rent from the Purchaser under section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

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 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.

Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50") states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

I find the stated purpose for ending the tenancy under the Two Month Notice was for the Purchaser or his close family members (i.e. a parent, spouse, or child; or the parent, spouse, or child of a spouse) to occupy the rental unit. I find the Purchaser's evidence is that he took possession of the rental unit on November 2, 2021, resided at the rental unit during renovations, moved out in February 2022, and has not returned to the rental unit since then. I find the Purchaser concedes that the rental unit was not used for the stated purpose of the Two Month Notice (that is, occupation by the Purchaser or the Purchaser's close family members) for at least 6 months beginning within a reasonable period after the effective date of the Two Month Notice.

Where a purchaser has not complied with the requirements of section 51(2), section 51(3) of the Act allows the purchaser to be excused from paying compensation to the tenant if there were "extenuating circumstances" that "prevented" the purchaser from doing so, as follows:

(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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), 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 further states:

G. 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.

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.

Based on the evidence before me, I am not satisfied that the circumstances described by the Purchaser constitute “extenuating circumstances” that “prevented” the Purchaser from using the rental unit for the stated purpose of the Two Month Notice for at least 6 months.

My reasons for reaching this conclusion are as follows:

- I am not satisfied that the Purchaser was “prevented” from residing at the rental unit due to YN suddenly and unexpectedly needing help with her business. I find it was open to YN to find individuals other than the Purchaser to help with her business while MTN was away. I find the Purchaser chose to personally help YN, and although this may be a logical choice given the relationship between the Purchaser and YN, I do not find the Purchaser was “prevented” from occupying the rental unit as a result of YN’s situation. I do not find the Purchaser’s circumstances to be akin to the examples listed in Policy Guideline 50, which include death and wildfire.
- Furthermore, I find that it was open to the Purchaser to keep the rental unit as his place of residence on the island rather than renting it out. In my view, the Purchaser could have helped YN on a temporary or part-time basis or in ways that did not require him to move out of the rental unit. I find the Purchaser chose to rent out the rental unit in February 2022 and move in with YN. I note the Purchaser may have had other considerations for doing so, including factors such as cost and convenience. However, I am not satisfied that such factors would amount to “extenuating circumstances” that would excuse the Purchaser from his legal obligation under section 51(2) of the Act.

Accordingly, I find the Purchaser has not demonstrated that he has met the requirements of section 51(2) of the Act and has not established on a balance of probabilities that there were extenuating circumstances preventing the Purchaser from doing so.

I conclude that pursuant to section 51(2) of the Act, the Tenants are entitled to compensation of 12 months’ rent from the Purchaser, in the amount of $\$2,500.00 \times 12$ months = \$30,000.00.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful in this application. I grant the Tenants’ claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants on this application is calculated as follows:

Item	Amount
Section 51(2) Compensation (\$2,500.00 × 12 months)	\$30,000.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$30,100.00

Conclusion

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **\$30,100.00**. This Order may be served on the Purchaser, 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: October 12, 2022

Residential Tenancy Branch