



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 15, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an order granting the return of the filing fee.

The hearing was scheduled for 1:30PM on October 4, 2022 as a teleconference hearing. The Tenant R.H. attended the hearing for the Tenants. No one attended the hearing for the Landlords. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant stated that he served the Notice of Hearing as well as the Tenants' documentary evidence to the Landlords in person on February 25, 2022. The Tenants provided pictures and a video of the service in support. Pursuant to Section 89 and 90 of the Act, I find these documents are deemed to have been served to the Landlords on the same day. While the Landlords provided documentary evidence in response to the Application, no one attended the hearing for the Landlords to present it for my consideration.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The Tenant testified the tenancy began on October 29, 2019. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,300.00 which was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$650.00 which has since been returned to the Tenants. The tenancy ended on January 30, 2022 in compliance with a Two Month Notice to End Tenancy for Landlord's Use of the Property dated November 26, 2021 (the "Two Month Notice").

The Tenant stated that the Landlords served the Tenants with the Two Month Notice with an effective vacancy date of February 1, 2022. The Tenants provided a copy of the Two Month Notice in support. The Landlords' reason for ending the tenancy on the Two Month Notice was;

"The rental unit will be occupied by the Landlord or the Landlord's spouse"

The Tenant stated that they complied with the Two Month Notice and vacated the rental unit on January 30, 2022. The Tenant stated that the Landlords listed the home for sale the very next day and sold the home one week later. The Tenant provided a picture of the sold sign in front of the rental unit in support.

The Tenant stated that the Landlords served the Two Month Notice in bad faith as the Tenants had refused to comply with the Landlords' request to pay a rent increase above the allowable amount, prior to being served with the Two Month Notice. The Tenant stated that the Landlords did not accomplish the stated purpose of the Two Month Notice, instead sold the rental unit. As such, the Tenants are seeking compensation equivalent to twelve times the amount of rent in the amount of \$15,600. If successful, the Tenants are also seeking the return of the filing fee.

As previously mentioned, no one attended the hearing for the Landlords to respond to the Tenant's testimony, or to present any of the Landlord's evidence for my consideration.

Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a

Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenants are claiming compensation in the amount of \$15,600.00 which represents twelve months of rent as the Landlords did not accomplish the stated purpose of the Two Month Notice for at least six months after the effective date of the notice.

In this case, I accept the Tenant’s testimony and evidence that they were served the Two Month Notice as the Landlords intended to occupy the rental unit. I find that after the Tenants complied with the Two Month Notice, the Landlords listed and sold the rental unit without accomplishing the stated purpose of the Two Moth Notice. As no one attended the hearing for the Landlords, I am unable to determine if an extenuating circumstance prevented them from doing so.

Based on the above I find that the Tenants are entitled to **\$15,600.00** in compensation from the Landlords, pursuant to section 51(2) of the *Act*. As the Tenants were successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$15,700.00.

Conclusion

The Landlords have not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$15,700.00.

The Tenants are provided with this Order 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: October 04, 2022

Residential Tenancy Branch