



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 an Application for Dispute Resolution (“application”) from the tenants seeking remedy under the *Residential Tenancy Act* (“Act”). The tenants applied for a monetary order of \$34,300 for compensation the equivalent of 12 months of rent based on the landlord not complying with the reason stated on a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated August 27, 2021 (“2 Month Notice”) and to recover the cost of the filing fee.

The hearing began on July 28, 2022 with the tenants, the landlord, TR (“landlord”) and a former agent of the landlord, JR (agent) attending the teleconference hearing and were affirmed. After 60 minutes, the hearing was adjourned and an Interim Decision dated July 28, 2022 (“Interim Decision”) was issued. The Interim Decision should be read in conjunction with this Decision.

On September 12, 2022, the hearing reconvened and after an additional 66 minutes, the hearing concluded. Attending the reconvened hearing were the tenants and the landlord. All parties were affirmed on July 28, 2022 and those attending on September 12, 2022 were reminded of their earlier affirmations on July 28, 2022.

Both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me. I have reviewed all oral, documentary and/or digital evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2019, and converted to a month-to-month tenancy after April 30, 2020. Monthly rent was \$2,850 per month and was due on the first day of each month.

There is no dispute that the tenants accepted the 2 Month Notice dated August 27, 2021. The tenants confirmed that they had received the required one-month compensation as the tenants were served a 2 Month Notice. The parties confirmed that the tenants vacated the rental unit on the effective vacancy date listed on the 2 Month Notice, which was October 31, 2021.

The reason stated on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord 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.

☐ 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 tenant no longer qualifies for the subsidized rental unit.

Summary of landlord's evidence

At the beginning of 2021, I was employed as a captain with [REDACTED], flying out of [REDACTED] and living with my wife and kids in [REDACTED] county. The effects of the Pandemic to [REDACTED] Flying Business was extensive resulting in a drop to their passenger traffic by more than 98%. In response to this and in order to try and remain solvent, along with many staff cuts, my employer stood down all pilots on the [REDACTED] base and removed me from flying duties. I was kept on standby along with a 50% reduction in my salary which was to remain for the entire year. This had a dramatic effect on my personal financial position to the point of no longer being able to cover our rent and living expenses in California. We had to make the extremely difficult decision to uproot our family and return to Canada where I could live within my financial means with my reduced salary, take stock and make a viable plan.

I owned a few rental properties which were being managed on my behalf by my property managers. Luckily, my rental property at [REDACTED] avenue, was available for our use. However, since this was a 692 sq. Ft studio, it was not large enough for our family but could be used temporarily until I could move to one of my larger units. For this, I chose to use my property at [REDACTED] as my residence as it was much larger and offered me the best financial benefits at the time. On May 26-2021, I contacted my property manager- Jenna at [REDACTED] - to explain my situation and decision to move into my property and to give the tenants the appropriate notice. A copy of this correspondence is attached to this package (page 1). After some difficulties in reaching the tenants, Jenna was able to give appropriate notice with a move out date of August 31st.

In early August, my property manager Jenna contacted me and informed me that the tenants were looking to purchase their first home and requested an extension of their move-out date until October 31. Having completed an international move ourselves, I understood the complexities and inconvenience that a household move entails. Being a reasonable and understanding landlord, I granted their request for an extension despite the negative aspects this caused my family with us living in our current cramped quarters. A copy of the correspondence with my property manager granting this extension request is attached (Page 2). Any further request for an extension beyond October 31st by the tenants was never communicated to me by [REDACTED].

With regards to my personal work situation as a pilot, events had taken a turn for the worse. The pandemic was still having a drastic effect on my employer's bottom line. As a result, [REDACTED] continued with cutbacks. They undertook a review of all their overseas pilot bases and began a phased permanent shutdown of their pilot bases in Australia, New Zealand, England, Canada and the US last. The Vancouver flying base was shut down on August 15, with

all of [REDACTED] Canadian based pilot's employment in Canada being terminated. With the US on course for shutdown next, this caused us massive financial and emotional stress. To cope with this situation, I was forced to sell my most valuable rental property in order to provide me some financial security. The stress of all these events took a massive toll on my family life and at this point my wife was no longer comfortable moving to Gastown after an incident where both her and my daughter were pepper-sprayed on Water street. Knowing that our tenants were looking to purchase a new home, my wife asked Jenna to see if they would be interested in buying our unit at [REDACTED] before discussing this with me. She saw this as a possible win-win, with our tenants buying a new home without having to move. This proved a moot point, as our tenants had no interest in purchasing our unit that they were living in.

The accumulation of all the stress caused by my work situation and our living accommodations began to take a toll on my marriage and in order to keep my wife happy, we decided to purchase her a condo nearer to my daughter's school and I was to move in to [REDACTED] as originally planned. We had enough funds to purchase her a small one bedroom + den at [REDACTED] Pennyfarthing. At this point, I was respecting my wife's wishes in order to keep our relationship afloat. This was a very difficult time for me.

Prior to my tenant's move-out date of October 31st, a move-out inspection was scheduled by my property managers which I requested to attend. The purpose of this inspection was to check on the general state of the unit. This inspection was scheduled for October 25, 2021. We found the unit to be in fair shape with normal wear and tear. I also met my tenants, [REDACTED] during this visit. They seemed friendly and at no point did they show any discontent. In fact, Jeff communicated to me that my condo had "served them well". A copy of the email from Jenna confirming this inspection visit is included (Page 3).

After my tenants had moved out, with the condo empty, I discovered two areas of concern with moisture ingress. The two areas were at the southwest wall of the unit and on the east wall between the right east window and vertical concrete beam. I wanted to have this addressed prior to moving in and with the scarcity of available trades in Vancouver, it took a while to have these issues sorted. I managed to secure painters for December to repair and paint the affected areas and they were finished on Dec 28th. A copy of their work receipt is included (Page 4). After the painting was finished, I booked movers and the move was performed on Jan 12th. A copy of the mover's invoice/receipt is included (Page 5&6). After moving in, photos of my furnished condo were taken and these are included in my package (Pages 7-11). Also included are copies of my driver's licence, with the change of address when I moved in to [REDACTED] (Page 12). The moisture ingress mentioned above on the east window corner, is still a nagging issue and being investigated by the contractor- [REDACTED]. A copy of the correspondence from the Strata manager at [REDACTED] on this issue is included (Page 13).

Finally, please find attached copies of my utilities for Shaw Cable and BC Hydro, on moving in and then most recent (Pages 14-17). With regards to the Fortis data mentioned in my tenant's evidence submission, I find this interesting as I do not have a personal Fortis client account

since the gas is included in my monthly strata fees. Also included in the strata fees is the heat which is provided by underfloor heat. Because of this, I do not use the gas fireplace. I am also not much of a cook and most of my meals are take-out, hence rarely use my gas stove.

Now I will address the other items mentioned in the evidence package from [REDACTED] submitted July 12, 2022.

As for the parking ticket referenced on page 5 of the tenant's package, the first time I was informed of this was via email from my property manager, Jenna, on October 21st (10 days prior to their move-out date). A copy of this email is attached (Page 18). Upon receipt, I immediately contacted Easypark to sort this out. The reason that the October parking permit was not renewed is that the credit card they had on file to settle the autopayments had expired. The outstanding bill, including the fine, was paid by me and no repercussions or costs were attributed to my tenants.

Referencing the emails and pictures from [REDACTED] on pages 6,7,8 and 23. Her email of December 29, exactly corresponds with the information I provided in my package with regards to the trades and painters working at the condo in December and her statement that she hadn't seen any furniture yet is correct since I hadn't arranged my movers until January 12th. As for the pictures with the partially opened blinds sent via email on Jan 18, these show exactly that my condo was now furnished after my move on January 12th, and show my flat-screen TV over the fireplace, my wall art, the back of my desk chair and my IMac computer which is on my desk near the southeast window. This also corresponds with the pictures of my furnished condo included in my package. And yes, I still had boxes around since it takes time to settle in after moving in. As for [REDACTED] comment regarding closing the blinds. This brings up the fact that the southern windows to my condo are directly looked into from the condos across the narrow alleyway and this is very intrusive (clearly evidenced by neighbors looking from across the alley and taking pictures). As a result, I keep these blinds closed for privacy and I have windows on the east side of my condo which are not overlooked directly by neighbors and which offer natural daylight. With my southern blinds closed, [REDACTED] email of May 30th makes no sense since she has no view to my condo to make the claims in her email about not recalling anyone living there. As for the reference to lights, I keep regular hours and normally go to bed between 11:30 and midnight.

With regards to the email statement made by [REDACTED] the upstairs resident at [REDACTED] this directly corresponds to when my son moved in with me after completing his term at university at the end of April. My wife was helping my son move and she confirmed she did meet a lady in the hallway. With regards to noise, with solid concrete floors and walls and only 2 units per floor separated by a stairwell, our building is very quiet and I do not hear my neighbors either. I am generally a quiet person as well. As a strata council member, I do know a few of the owners at [REDACTED] however I do not know any of the tenants.

Now for my Strava account brought up on pages 12-19 of the tenant's package. Yes, I am an avid cyclist and I use the Strava app for training purposes. My rides depicted on the screenshots on pages 12-14 are when I was getting to know my way around Vancouver's cycling routes, and

correctly correspond with when I was living at [REDACTED] avenue. After a long and wet winter, I began cycling again. I had registered for and began training for the [REDACTED] [REDACTED] which I just recently took part in on July 10th. I take my cycling training for [REDACTED] (long races) seriously and this includes both a 20 minute warm-up period (and cool down period post ride) prior to logging my training effort. [REDACTED] statement on page 12 is correct that I start to log my training rides near [REDACTED] Cornwall. In particular, this is at [REDACTED] Park where the bike lane at [REDACTED] road begins and where there is less stop and go and you can begin to ride at a steady speed. This is important because to register for the [REDACTED], you need to enter your estimated average speed in order to be placed in the correct starting group. So, it is best to start your training routes where you minimize stop and go traffic and can better gauge your average speeds. In summary, since the beginning of my training this year, I used the 20 minute warm up/cool down period pre and post ride to get to and from my condo at [REDACTED] and this also gets me through all the stop and go areas of the city and this is the reason why the Strava logs of my rides do not begin or end at [REDACTED]

also lists all the properties that I own with title searches in his package. Yes, I do own several investment properties. I purchased my first rental property in 2002. I am an airline pilot and not a property manager. That is why I use professional property managers to manage my properties, so that all aspects of the residential tenancy act are adhered to. All my rental properties have been long-term rentals. The number of properties I own is irrelevant to the tenant's claims in this case. I already addressed the purchase of Pennyfarthing in my above statements. We are listed as joint-tenants because I secured the financing since is a homemaker. All my other rental properties are owned by me. submission on page 20 where my wife asks a question in the community group correctly correlates with her living at Pennyfarthing.

Finally, I would like to address closing statement on page 20. I strongly disagree with all of allegations. From past experience, I do understand all the complexities involved with purchasing and closing on a property. I clearly explained the reasons why I decided to vacate this tenancy. My property managers are responsible for ensuring that appropriate notice is given to tenants and that all aspects of the Residential Tenancy Act are adhered to. I was accommodating and granted their extension of 2 extra months until October 31st to help them out. I did not receive any further communication regarding a further extension to their timeline. For the areas of concerns I had to address (moisture ingress), did delay my moving in but, I would say that it was within a reasonable time frame. In contrast to closing statement, I do believe that my actions as explained in my statements above, prove that: per the good faith requirement under section 49 indicate that the landlord must, and that I DID:

- Take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of notice, or
- Use the rental unit for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

[reproduced as written with personal information redacted]

Summary of tenants' evidence

The tenants argue that the landlords failed to move into the rental unit in a reasonable time period. The tenants also argue that the reasons provided by the landlord in their evidence does not support extenuating circumstances under the Act.

Although the tenants provided much more documentary evidence and testimony than what is described above, I find that it is not required for this Decision given the evidence presented above by both parties. This is also consistent with the burden of proof, which is solely on the landlord in this matter.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and 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

- (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.**

[emphasis added]

In addition to the above, section 51(3) of the Act states:

(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.**

[emphasis added]

I will first address the landlord's claim that they moved into the rental unit within a reasonable period of time. RTB Policy Guideline 50 – Compensation for Ending a Tenancy (Guideline 50) applies and states the following in terms of reasonable time:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The

reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. **For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in** while that work was completed since it could be finished faster if the unit was empty. [emphasis added]

I find Guideline 50 takes a reasonable approach and based on the evidence before me, and if I take the invoice at face-value, I find the following. Firstly, a \$500 amount for repair and repainting of walls which is listed as starting on December 22, 2021 and ending on December 28, 2021 is a minor amount for repair and repainting of walls (Minor Repair). Secondly, I find that none of the work described would prevent the landlord from moving into the rental unit earlier and that the Minor Repair would not create an inconvenience comparable to having all carpeting, or other flooring, being removed and replaced as noted above. Thirdly, I am not persuaded by the landlord's testimony that indicates that due to 2 areas of water ingress discovered only after the tenants vacated and that the landlord "wanted to have this addressed prior to moving in and with the scarcity of available trades in Vancouver, it took a while to have these issues sorted." I find that it is more likely than not that in the largest city in British Columbia, Vancouver, that it would not take 2 months to arrange for the Minor Repair worth \$500 to be addressed.

Consequently, as the landlord did not move into the rental unit until January 12, 2022, I find the landlord has provided insufficient evidence that they used the rental unit within a reasonable period after the effective date of the 2 Month Notice, which stated October 31, 2021 (Effective Date)

The remaining issue before me, is whether the landlord has provided sufficient evidence of whether extenuating circumstances exist that stopped the landlord from using the rental unit within a reasonable period and for at least 6 months from Effective Date. Guideline 50 applies and states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. 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.

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.

[emphasis added]

I find Guideline 50 takes a reasonable approach and based on the evidence before me, I find as follows. Firstly, the landlord writes that the number of rental properties they own is irrelevant to the tenant's claims in this case. I disagree due to the fact that I find the landlord has provided insufficient evidence as to why they could not utilize one of their other five properties they own, on at least on a temporary basis. Secondly, and as mentioned above, I am not persuaded that it would take 2 months in Vancouver to secure a contractor to do \$500 worth of repairs and repainting. Thirdly, and as mentioned above, I find the Minor Repairs would not prevent the landlord from occupying the rental unit and deal with a minor inconvenience, at most. As such, I find the landlord made the decision not to occupy the rental unit until January 12, 2022 for reasons that do not meet the definition of extenuating circumstances.

As I am not persuaded that the Minor Repairs prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice, I find the tenants' application is successful.

As a result of the above, I find the tenants are entitled to **\$34,200** in compensation from the landlord, comprised of 12 times the monthly rent of \$2,850 pursuant to section 51(2) of the Act. In addition, as the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$34,300** comprised of \$34,200 for 12 times the \$2,850 monthly rent, plus the \$100 filing fee.

Conclusion

The tenants' application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose within a reasonable period after the October 31, 2021 effective date.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$34,300 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The following website has further information about serving a monetary order, a demand letter and enforcement of a monetary order:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing/serving-and-enforcing-orders>

This Decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord. Should the landlord fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2022

Residential Tenancy Branch