



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNECT

Introduction

This hearing was convened in response to the Tenants' application for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that the Dispute Resolution Package was served to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving these documents, although he cannot recall the date they were received. On the basis of this testimony, I find that the documents have been served in accordance with section 88 of the *Residential Tenancy Act (Act)*.

On February 21, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving this evidence, although he cannot recall the date it was received. As the Landlord acknowledged receiving the evidence, it was accepted as evidence for these proceedings.

On March 05, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord stated that he does not recall receiving this evidence. As the Landlord does not acknowledge receiving this evidence and in the absence of evidence, such as Canada Post documentation that corroborates it was served, this evidence was not accepted as evidence for these proceedings.

On September 27, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving this evidence, although he cannot recall the date it was received. As the Landlord acknowledged receiving the evidence, it was accepted as evidence for these proceedings.

On April 26, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Tenant attempted to raise issues related to his original landlord's promise that they could rent the unit for several years, details of the original landlord's promise that the unit would be sold to an investor, and details of his wife's health, which made moving difficult.

The parties were advised that these issues were not relevant to whether the Tenants were entitled to compensation pursuant to section 51(2) of the *Act*, and discussion of those submissions was not permitted.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental

unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenant stated that this tenancy began on December 01, 2020. The parties agree that the Landlord purchased the rental unit in May of 2021.

The parties agree that the Tenants were required to pay monthly rent of \$2,550.00 by the first day of each month.

The parties agree that on July 29, 2021 the Landlord sent the Tenants an email in which the Landlord declared that the rental unit must be vacated by December 01, 2021. A copy of this email was submitted as evidence.

The Tenant stated that the rental unit was vacated on December 01, 2021. The Landlord stated it was vacated on December 02, 2021.

The Landlord stated that when the notice to end tenancy was served to the Tenants, the Landlord and the Co-owner of the property intended to move into the unit; they did not move into the rental unit because they moved to Quebec as a result of the Co-owner's new job; and they are currently living in Quebec.

The Co-owner of the rental unit stated that in September of 2021 she was offered employment in Quebec; that she was recruited for the job and did not apply for it; she accepted the employment offer because it paid significantly more than she was earning in BC; and she moved to Quebec to accept that employment offer.

The Tenant stated that the Co-owner is a share holder of a local bicycle store. The Co-owner stated that she sold those shares approximately 3 years ago.

The Tenant stated that the Landlord is a co-owner of a local bicycle and a co-owner of a bicycle store in a neighbouring community. The Landlord does not dispute this submission.

The Landlord and the Tenant agree that on September 23, 2022 the Landlord sent the Tenants an email, a copy of which was submitted in evidence.

The Landlord stated that the Tenants did not indicate a desire to continue living in the rental unit and, as such, it was rented to a third party effective January 01, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Landlord purchased the rental unit in May of 2021, at which time he became the Tenants' Landlord.

On the basis of the tenancy agreement submitted in evidence, I find that the Tenants entered into a tenancy agreement with the original owner of the rental unit. I find that the fixed term of the tenancy agreement ended on December 01, 2021 and that the tenancy continued on a month to month basis after December 01, 2021.

On the basis of the undisputed evidence, I find that on July 29, 2021 the Landlord sent the Tenant an email in which the Landlord informed the Tenants they must vacate the rental unit by December 01, 2021.

In the email of July 29, 2021, the Landlord declares, in part, that the Tenants' lease ends on December 01, 2021. While the fixed term of the tenancy ended on December 01, 2021, the tenancy agreement continued on a month to month basis as outlined in the written tenancy agreement. The Tenants were not, therefore, required to vacate the unit because the lease "ended". Rather, the Tenants were entitled to remain in the unit until it was ended in accordance with the *Act*.

There are various reasons a landlord can end a tenancy, which are outlined in section 46 through 49.2 of the *Act*. A landlord cannot end a tenancy for reasons other than those outlined in sections 46 through 49.2 of the *Act*.

In the email of July 29, 2021, the Landlord declares, in part, that the Landlord is required to give the Tenants 4 month's notice that their lease will be "terminated" and that the email serves as notice of this termination. A landlord cannot simply declare that a tenancy will be "terminated" without relying on sections 46 through 49.2 of the *Act*. I therefore find that the Landlord's declaration that the tenancy will be "terminated" has no force or effect.

Section 49(3) of the *Act* permits a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In the email of July 29, 2021, the Landlord declares, in part, that pursuant to the end of their lease, the rental unit must be vacated by December 01, 2021 and that owners will be moving into the rental unit on December 01, 2021.

Although the Landlord did not comply with the *Act* when the Landlord did not serve notice of the Landlord's intent to end the tenancy on a proper Two Month Notice to End Tenancy for Landlord's Use, I find that the Landlord's email served to end this tenancy pursuant to section 49 of the *Act*.

As the Landlord benefited from the provisions of section 49 of the *Act*, I find it reasonable to conclude that the Landlord must accept the obligations associated to ending the tenancy pursuant to section 49 of the *Act*. As the email declared that the Landlord was going to occupy the rental unit, I find that the Landlord was obliged to do so.

Section 51(2) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence, I find that the Landlord did not move into the rental unit, as he declared was his intention in the email of July 29, 2021. As such, the Landlord is subject to the penalty imposed by section 51(2)(a) of the *Act*, unless section 51(3) applies.

Section 51(3) of the *Act* authorizes me to excuse a landlord from paying the tenant the amount required under subsection (2) if, in my opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and 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.

On the basis of the undisputed evidence, I find that the Landlord and the Co-owner did not move into the rental unit because they left the province so the Co-owner could

pursue a lucrative career opportunity. As this career opportunity was presented to the Co-owner and she did not apply for it, I find that the Landlord/Co-owner could not have reasonably expected the opportunity to arise when they sent the email of July 29, 2021.

I find that leaving the province to pursue a lucrative career opportunity is an extenuating circumstance that prevented the Landlord from moving into the rental unit and from occupying it for 6 months. Pursuant to section 51(3) of the *Act*, I therefore excuse the Landlord from paying the tenant the amount required under section 51(2) of the *Act*. I therefore dismiss the Tenant's application for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use.

During this adjudication I placed no weight on the Tenant's submission that the Co-owner is a share holder in a local bicycle store, as the Co-owner stated that she sold those shares approximately 3 years ago.

During this adjudication I placed no weight on the Tenant's submission that the Landlord is a co-owner of a local bicycle and a co-owner of a bicycle store in a neighbouring community. I find this undisputed submission has no weight on whether the Landlord and the Co-owner left the province to pursue an employment opportunity.

On the basis of the undisputed evidence, I find that on September 23, 2022 the Landlord sent the Tenants an email, which I have read that email. Although it is not entirely clear in the email, I find that the Tenants should have understood that there was a possibility that their tenancy could continue. On the basis of the undisputed evidence, I find that the Tenants did not contact the Landlord to discuss continuing the tenancy.

The Tenants were under no obligation to agree to continue the tenancy and, as such, I have placed little weight on the email of September 23, 2022. I have placed some weight on the email, however, as it corroborates the Landlord's submission that he moved out of the province.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 16, 2022

Residential Tenancy Branch