



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

In this application for dispute resolution, the tenants applied on February 2, 2022 for:

- compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose; and
- recovery of the filing fee.

The hearing was attended by tenant LE but not the purchaser of the rental unit. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified they served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the purchaser by registered mail to the rental unit on February 10, 2022, and provided a tracking number as noted on the cover page of this decision. I find the tenants served their materials on the purchaser in accordance with section 89 of the Act and deem them received by the purchaser on February 15, 2022, pursuant to section 90.

Issues to be Decided

- 1) Are the tenants entitled to compensation because the purchaser who asked the landlord to end the tenancy has not used the rental unit for the stated purpose?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began December 18, 2017 and ended on June 1, 2022; rent was \$1,650.00, due on the first of the month, and the tenants paid a security deposit of \$825.00, which the landlord has returned.

A copy of the tenancy agreement was submitted as evidence, indicating that rent was \$1,650.00.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 22, 2021, is submitted as evidence and indicates an effective date of June 30, 2021. It states the purchaser or a close family member will occupy the rental unit.

A copy of the Contract of Purchase and Sale Addendum is submitted as evidence; it is dated April 5, 2021 and states that the purchaser wishes to occupy the premises, and that the purchaser requests that the seller give notice to the tenants to vacate the unit, pursuant to section 49 of the Act.

The tenant testified she does not think the purchaser moved into the rental unit. The tenant testified they moved to a unit only a block away, and are constantly passing the subject unit as there is a trail right beside the property. The tenant testified they saw no activity in the subject unit for months after they moved out.

The tenant testified that she is still good friends with the neighbour across the hall from the subject unit, who said there was no activity there after July 2021. The tenant testified that the last time she was in touch with the neighbour, was July 2022, and at that time the neighbour said there was still no activity at the subject unit up to June 1, 2022; after that point the neighbour relocated to a different floor in the property.

The tenant testified that from what the neighbour understood from the building manager, the purchaser travelled overseas for an extended time immediately after the purchase of the rental unit.

The tenant testified that because the NDRP and evidence she served on the purchaser were returned, she tried to serve the purchaser in person, finding that the property's entry system was not connected to the unit. The tenant explained that usually when someone wishing to gain entry dials a unit number, the system connects to a cell phone or other number as set up by the tenants. However, when the tenant entered the unit number for the rental, the system did not connect, and "just went dead."

Analysis

Section 51(2) of the Act states:

(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 2A](#): *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides the following guidance regarding vacant possession, with respect to section 49:

Vacant possession

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 ... 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.

Policy Guideline 2A provides that:

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,

- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

The tenant testified that their direct observation, and the observations of a neighbour who lived across from the rental unit until June 2022, indicate there has been no activity at the rental unit after July 2021.

If the purchaser had moved into the rental unit, as it was indicated they intended to, I would expect that the tenants, or their former neighbour, or both, would have noticed activity in the rental unit after the tenants moved out.

Based on the tenant's affirmed undisputed testimony, I find, on a balance of probabilities, that the purchaser did not occupy the rental unit within a reasonable period after the effective date of the Two Month Notice and for a minimum of 6 months. I find the purchaser has not met their obligation, so pursuant to section 51(2), owes the tenants 12 times the monthly rent of \$1,650.00 payable under the tenancy agreement: \$19,800.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the purchaser to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The tenants are entitled to a monetary order in the amount of \$19,900.00, comprising \$19,800.00 for 12 times the rent, and \$100.00 for the filing fee.

Conclusion

The tenants are granted a monetary order for \$19,900.00. The monetary order must be served on the purchaser. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 11, 2022

Residential Tenancy Branch