



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On March 20, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants and both Landlords attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant J.S. advised that they served each Landlord with a separate Notice of Hearing and evidence package by registered mail on March 25, 2022. Landlord N.S. confirmed that he received this package and Landlord G.S. advised that he was prepared to respond to it. Based on this undisputed testimony, I am satisfied that the Landlords were duly served the Notice of Hearing and evidence packages and that the hearing would proceed. As such, the Tenants’ evidence was accepted and will be considered when rendering this Decision.

N.S. advised that their evidence was served to the Tenants by registered mail in August 2022 sometime, and J.S. confirmed that they received this evidence in that timeframe.

As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order in the amount of 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

J.S. advised that the tenancy originally started with a different landlord on April 1, 2018, that the Landlords subsequently purchased the rental unit, and that the tenancy ended on January 21, 2022, when they gave up vacant possession of the rental unit based on their 10 days' notice to end the tenancy early. Rent was established in the amount of \$1,332.50 per month, and was due on the first day of each month. A security deposit in the amount of \$650.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Landlords advised that they were brothers, that they purchased the rental unit on December 13, 2021, and that they took possession of it on March 2, 2022. They stated that they had no idea about the details of the tenancy because the tenancy agreement was not provided to them by the seller. However, they acknowledged that they received a copy of the tenancy agreement in the Tenants' evidence package, and they did not dispute any basic details of the tenancy. They also confirmed that signed a document

stating that all of the conditions of the sale of the rental unit were satisfied, and that they asked the seller, in writing, to serve the Notice on the Tenants because they intended in good faith to occupy the rental unit.

N.S. advised that his family, along with his brother's family, and their parents were planning on moving into the rental unit. However, their uncle passed away unexpectedly on February 22, 2022, so this delayed their parents' ability to move in. In addition, he stated that he had a baby on March 7, 2022, and this also delayed his family's ability to move in. He testified that after they obtained possession of the rental unit, they completed renovations to the rental unit, such as changing the flooring so that they could make it livable. He acknowledged that neither of the Landlords, nor their close family members, moved into the rental unit until April 14, 2022.

He testified that his family and his brother's family were living in a rental property prior to moving into the dispute property, and that they gave their written notice to end their tenancy in mid-February 2022, for an effective end date of tenancy of April 1, 2022. However, they then requested from their own landlord that they have an additional 15 extra days to vacate.

G.S. advised that he lived with N.S. in a rental property, that they purchased the despite property, and that they intended to move into it with their parents. However, they did not do so until mid-April 2022. He reiterated that their uncle passed away, which delayed their parents' ability to move in. As well, he stated that N.S. had a baby on March 7, 2022. He submitted that the reason he did not move into the rental unit with his own family after the effective date of the Notice was because he was supporting his brother with the newborn and that the rental unit was too far away to travel back and forth. He testified that the renovations that they conducted on the rental unit consisted of a change of flooring, a change of taps, and other superficial items.

J.S. advised that the Landlords posted the rental unit as available for rent online on March 13, 2022, and that it was available for a one-year lease. In addition, the Landlords put up a "For Rent" sign in front of the property. She stated that their friends subsequently contacted the Landlords by text message in March 2022 to confirm that the rental unit was available, and they received acknowledgement of this from the Landlords. She referenced documentary evidence submitted to support this position. As well, she testified that the Landlords removed the online ad after they received the Tenants' Notice of Hearing package.

She referenced the Landlords' documentary evidence where they confirmed that they posted the rental unit for rent because they were seeking "financial help." As well, she submitted that N.S. would have been aware of the due date of his baby prior to purchasing the rental unit.

N.S. responded and confirmed that they posted the rental unit for rent because of financial stress they were facing, but he acknowledged that this was a mistake to post. He initially stated that they posted the ad in February 2022, but then later contradictorily stated that it was "maybe" posted in March 2022. He submitted that the rental unit was posted as available for either March 15, 2022, or April 1, 2022. He stated that they never intended to post the rental unit for a one-year tenancy, that this was not indicated on the ad, and that if it was, it was an unintentional mistake.

G.S. reiterated that it was their intention to move into the rental unit; however, their parents were delayed in doing so due to the passing of the family member. So, they "thought" that they would "check the market" to rent the unit for a "few months". He confirmed their intention to rent the rental unit in March 2022. He initially testified that they received the Tenants' Notice of Hearing package and they "did not want trouble", so they did not rent out the unit. He then contradictorily submitted that renting the unit "did not work out" and that "options were not coming in" as the reasons they did not rent the unit. However, he then acknowledged that the real reason they did not rent out the unit was due to the fact that they received notification of the Tenants' dispute.

N.S. advised that the timing of the circumstances was "bad", that they were "mixed up", and that they "did not know about the rule" with respect to the consequences of attempting to use the rental unit for a different purpose other than what was outlined on the Notice.

J.S. advised that the online ad specifically indicated that the rental unit was available for a one-year tenancy, and that it was posted for almost two weeks. Furthermore, she testified that when the property was listed for sale, it was advertised as an "investment property with a good tenant", and that it was noted in the sale listing that the Tenants wished to stay in the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit when the Landlords enter into an agreement in good faith to sell the rental unit, where all of the conditions on which the sale depend have been satisfied, and where the Landlords have asked the seller, in writing, to give notice to end the tenancy because the Landlords, or a close family member of the Landlords, intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by that landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the consistent and undisputed evidence before me, I am satisfied that all of the conditions on which the sale depends have been satisfied and that the Landlords asked the seller, in writing, to give the Notice because they, or a close family member of the Landlords, intended in good faith to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated December 15, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.*

(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.*

At the time the Notice was served, the Landlords attempted to suggest that the intention was for them and their close family members to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, within a reasonable period of time, after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlords, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to this situation, Policy Guideline # 2A states that "the implication is that 'occupy' means 'to occupy for a residential purpose.' (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space."

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation

to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was because all of the conditions on which the sale depends have been satisfied, and the Landlords have asked the seller, in writing, to give the Notice because they, or a close family member of the Landlords, intend in good faith to occupy the rental unit. However, the Landlords acknowledged that neither of them, nor a close family member, occupied the rental unit until April 14, 2022. Given that this was six weeks after the effective date of the Notice, I am satisfied that the Landlords failed to use the rental unit for the stated purpose, within a reasonable period of time, after the effective date of the Notice, as required by the *Act*. Consequently, the only thing I must consider now are extenuating circumstances.

As such, the only issue I must consider now are extenuating circumstances. I note that Policy Guideline # 50 outlines the following about 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.

The consistent and undisputed evidence before me is that the effective date of the tenancy on the Notice was February 28, 2022, and I am satisfied that the Landlords only occupied the rental unit six weeks after the effective date of the Notice. While the Landlords advised that their parents did not move in due to the death of their uncle, I accept that this could have been a likely reason to delay their move-in date. However, I note that the Landlords have provided no documentary evidence that it was ever their parents' intention to move into the rental unit.

I note that the passing of the family member on the death certificate was indicated as February 22, 2022. However, given that the Notice was dated December 15, 2021, if it was partially the intention to have the parents move into the rental unit, I can reasonably infer that steps would have been initiated to plan for them to move into the rental unit for the effective date of the Notice, which was February 28, 2022. As they would have been

only aware of this passing in late February 2022, I can reasonably conclude that the parents would already have made some arrangements to move into the rental unit well in advance of this date. Without any documentary evidence to support the parents' intention to move into the rental unit, I am skeptical of this submission as purported by the Landlords. Furthermore, there was no testimony provided that the parents ever moved into the rental unit to date. As such, I am doubtful that it was ever the intention of the parents to move into the rental unit, and I reject the Landlord's claim of the death constituting an extenuating circumstance.

With respect to N.S.'s claim that having a baby qualified as an extenuating circumstance, I note that he would have been well aware of the approximate due date of his baby prior to the purchase of the property, and prior to the Landlords requesting that the seller serve the Notice. Clearly, this possible outcome could have reasonably been foreseen and anticipated. As such, I reject this submission as an extenuating circumstance.

As well, I note that the Landlords indicated that they renovated the rental unit allegedly to prepare it for habitation for them and the new baby. However, this Notice is not for the purpose of ending a tenancy for renovation. The Landlords should have done their due diligence prior to purchasing the property, and if it was their opinion that the rental unit required renovations prior to occupying it, then they should not have directed the seller to serve the Notice. Again, this possible outcome about the suitability of the rental unit could have reasonably been foreseen and anticipated. As such, I reject this submission as an extenuating circumstance.

I also find it important to note that the Landlords claimed to have rented a property prior to moving into the rental unit and that they gave their notice to end this tenancy in February 2022 that was effective for April 1, 2022, but they then extended this tenancy a further two weeks. However, they have provided no documentary evidence to corroborate the legitimacy of any of these submissions. Moreover, given that the effective end date of the tenancy was February 28, 2022, it makes little sense that they would have provided notice to end their own tenancy in February 2022, if they had intended to move into the rental unit prior to the Notice being served in December 2021. I find that the inconsistencies in the Landlords' submissions cause me to question, and to be skeptical of, the credibility and truthfulness of the Landlords on the whole.

In addition, the consistent and undisputed evidence is that the Landlords conducted renovations to the rental unit after the effective date of the Notice, and posted the rental unit online as available for rent shortly after the effective date of the Notice. Also, this clearly was posted for a one-year tenancy. Given that I am already skeptical of the reliability of the Landlords' submissions, I reject that this was inadvertently posted as a long-term rental. Moreover, and more significantly, I note that the Landlords acknowledged that they were not aware that the *Act* prohibited them from re-renting the unit after the Notice was served, and that they removed the ad only after they were served the Tenants' Notice of Hearing package as they did not want to get into "trouble". In conjunction with the doubts above, I find that this causes me to be dubious of the truthfulness of the Landlords' submission on the whole.

When assessing the totality of the evidence before me, I find the entirety of the Landlords' submissions to be questionable and their credibility to be lacking completely. In my view, I find it wholly apparent that the Landlords were not aware that they could not re-rent the rental unit after this Notice was served. In addition, it is uncontroverted that they renovated the unit and posted it for re-rent for a one-year tenancy immediately after the effective date of the Notice. Moreover, the only reasons for why they took the ad down and for why they did not rent out the unit was because they received the Tenants' Notice of Hearing package.

Given this, I am not satisfied of the credibility, reliability, or truthfulness of the Landlords' submissions brought forth during the hearing. I find it more likely than not that the Landlords renovated the rental unit in an effort to re-rent it for a higher rent. Furthermore, it was only after receiving the Tenants' Notice of Hearing package that the Landlords realized that they were not permitted to do this. As such, they attempted to construct any semblance of a potentially valid reason for not complying with the *Act* in an attempt not to be held liable for what the Tenants were claiming for in this Application.

Ultimately, I am not satisfied that the Landlords used the rental unit for the stated purpose, within a reasonable period of time, after the effective date of the Notice. Furthermore, I am also not satisfied that there were any unforeseen or extenuating circumstances that prevented them from doing so. As such, I am satisfied that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$15,990.00**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

12 months' compensation	\$15,990.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$16,090.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$16,090.00** 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.

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 18, 2022

Residential Tenancy Branch