



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX REALTY SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNETC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 28, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 22, 2022 were sent to the Landlord's agent, via registered mail. The Landlord acknowledged receiving these documents from his agent. As the Landlord acknowledges receipt of these documents, they were accepted as evidence for these proceedings.

On October 19, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that this evidence was served to the Landlord's agent, via registered mail and email, on September 13, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In October of 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant's legal counsel, via email, on October 28, 2022. Legal Counsel for the Tenant acknowledged receiving this evidence and it was 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, with the exception of Legal Counsel for the Tenant, 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. The Landlord and the Tenant affirmed they would not record any portion of these proceedings. Legal Counsel for the Tenant assured me she would not record any portion of the proceedings.

Preliminary Matter

At the outset of the hearing the Landlord stated that he intended to call his agent as a witness. Prior to the conclusion of the hearing the Landlord advised he did not think it was necessary to call a witness.

Issue(s) to be Decided

Is the Tenant 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 September 15, 2012 and that it was purchased by the Landlord after the start of her tenancy. The Landlord agrees that the Tenant was residing in the rental unit when he purchased the residential complex.

The Landlord and the Tenant agree that the rental unit was vacated on January 31, 2022. The parties agree that the monthly rent was \$947.78 when the tenancy ended.

The Tenant stated that on December 27, 2021 an agent for the Landlord personally served her with a Two Month Notice to End Tenancy for Landlord's Use, which declared that she must vacate the unit by February 28, 2022. The Landlord stated that he is not certain when the Two Month Notice to End Tenancy for Landlord's Use was served, as it was served by his agent. The parties agree that the Two Month Notice to End

Tenancy for Landlord's Use declared that the rental unit must be vacated because it will be occupied by the Landlord or the Landlord's spouse.

The Landlord stated that when he served the Two Month Notice to End Tenancy for Landlord's Use, he intended to occupy the unit with his family on a part-time basis, commencing March 01, 2022. He stated that his intent was to use it as a secondary residence, as his primary residence is in another community.

He stated that the unit was occupied by himself, his spouse, and/or his children on the following dates:

- March 01 – 04, 2022;
- April 14 – 17, 2022;
- June 30 – July 03, 2022;
- July 15 – 18, 2022;
- July 19 – 22, 2022; and
- August 22 – 28, 2022.

The Tenant stated that she does not know if the Landlord occupied the rental unit on the aforementioned dates.

The Landlord stated that the rental unit was not occupied by a third party between March 01, 2022 and August 31, 2022. The Tenant stated she cannot confirm or deny that testimony.

The Landlord stated that the rental unit was re-rented on September 01, 2022 for a fixed term that ends on May 31, 2022. He acknowledges that the tenancy agreement does not require his new tenant(s) to vacate the unit at the end of the fixed term but his agent selected students as tenants and he anticipates they will vacate at the end of the fixed term.

He stated that he was unaware that he could require tenants to leave at the end of a fixed term and, if circumstances warrant it, he will consider serving the new tenants with a Two Month Notice to End Tenancy for Landlord's Use if they do not opt to vacate the rental unit at the end of the fixed term of the tenancy.

The Landlord stated that the hydro, cable, security system, and water bill for the unit are all in his name. The Tenant stated that the water bill was in the Landlord's name during her tenancy.

The Landlord stated that the rental unit was furnished when it was rented to the new tenants and it was unfurnished when it was rented to the Tenant. The Tenant agrees she rented an unfurnished unit.

The Landlord and the Tenant agree that after the Tenant's her tenancy ended, the rental unit was painted, the flooring was replaced, and there were some renovations to the bathroom. The Landlord stated that these renovations were mostly completed in February of 2022, as the Tenant vacated the unit prior to the February 28, 2022 effective date of the Two Month Notice to End Tenancy for Landlord's Use and prior to his plan to occupy the unit on March 01, 2022.

In response to a question asked by Legal Counsel for the Tenant, the Landlord stated that he personally viewed the rental unit on July 22, 2020 when the unit was inspected prior to the completion of the sale of the property. He stated that he was not introduced the Tenant during the inspection on July 22, 2020

The Tenant stated that she does not recall the unit being inspected on July 22, 2020 and she did not meet the Landlord prior to him purchasing the property.

The Landlord and the Tenant agree that the Landlord viewed the rental unit, via telephone, prior to purchasing the unit.

In response to a question asked by Legal Counsel for the Tenant, the Landlord stated that he selected this unit to live in as it is a two bedroom unit which is adequate for his family, which consists of two adults, two children, and a dog. He stated that his children sleep in the same room in his primary residence and they do not need a third bedroom in this unit.

In response to a question asked by Legal Counsel for the Tenant, the Landlord stated that when the Two Month Notice to End Tenancy for Landlord's Use was served, he intended to occupy the unit for "at least six months". He stated that if they had been unable to re-rent the unit for September, he would have used it for longer.

Legal Counsel for the Tenant submits that the Landlord could have moved into one of the other properties that the Landlord owns in the community and that he selected this unit because the Tenant was paying the least amount of rent. She submits that the Landlord has an ulterior motive of ending the tenancy so he could subsequently re-rent

it for more money.

The Landlord stated that he owns 8 rental units in the community and that he selected this unit for occupancy because it is the smallest and most suitable for his family. He acknowledges that the other units are paying more rent, as they are larger.

The Landlord stated that his parents live in a condo in this community, which is too small to accommodate the Landlord's family, that he regularly visits in the community, and having a small home suits his needs while he is visiting the community.

Legal Counsel for the Tenant noted that the Landlord has re-rented the unit for significantly higher rent. The Landlord stated that the new tenants are paying rent of \$2,500.00, but that price includes utilities and furnishings. He stated that if he had moved into one of his other rental units and then re-rented it, he would have been able to collect similarly increased rent, as cost of rental units have increased significantly.

In response to a question asked by Legal Counsel for the Tenant, the Landlord stated that he has not changed the address on his driver's license.

Legal Counsel for the Tenant submits that the Landlord only resided in the rental unit for a total of less than six weeks between March 01, 2022 and August 31, 2022 and, as such, the Landlord is liable for the penalty imposed by section 51(2)(b) of the *Act*.

Legal Counsel for the Tenant argued that the Landlord did not use the rental unit as a primary residence and, as such, did not comply with section 51(2) of the *Act*.

Analysis

On The basis of the undisputed evidence, I find that:

- The Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the tenancy was ending on February 28, 2022 because the unit would be occupied by the Landlord or the Landlord's spouse;
- The Two Month Notice to End Tenancy for Landlord's Use was notice to the Tenant that the Landlord was ending the tenancy pursuant to section 49(3) of the *Act*;
- The tenancy ended on the basis of the Two Month Notice to End Tenancy for Landlord's Use, although the Tenant vacated the unit on January 31, 2022, which is one month earlier than the effective date of the Two Month Notice to

- End Tenancy for Landlord's Use; and
- At the end of the tenancy the monthly rent was \$947.78.

Section 49(3) of the *Residential Tenancy Act (Act)* permits a landlord who is an individual to 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. (Emphasis added)

Residential Policy Guideline 2A explains that acting in “good faith” means that:

...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.

Good faith is an issue that must be determined when considering whether a Landlord has grounds to end the tenancy pursuant to section 49(3) of the *Act*. As this tenancy has already ended, and the Tenant did not apply to dispute the Two Month Notice to End Tenancy for Landlord's Use, it is not for me to determine whether this Two Month Notice to End Tenancy for Landlord's Use was served in good faith.

Section 51(2) of the *Act* reads:

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.

There is nothing in section 51(2) of the *Act* that stipulates that the rental unit must be “used for the stated purpose” in “good faith”. There is nothing in Residential Tenancy Branch Policy Guidelines that suggest the rental unit must be “used for the stated purpose” in “good faith”. I therefore find that I do not need to consider the issue of

“good faith” when determining whether compensation is due pursuant to section 52(2) of the *Act*.

As I do not need to consider the issue of “good faith”, I will not be addressing the evidence that speaks to the issue of “good faith”, which includes:

- That the hydro, cable, security system, and water bills for the unit are all in the name of the Landlord;
- Whether the rental unit was physically viewed by the Landlord prior to him purchasing the rental unit;
- Whether the rental unit is an adequate size to be used by the Landlord and his family as a secondary residence;
- Whether other residential property owned by the Landlord would have been more suitable for his family to use as a secondary residence;
- Whether the Landlord served the Two Month Notice to End Tenancy for Landlord's Use with the intent of subsequently re-renting it for increased rent;
- That the rental unit was subsequently re-rented for a significantly increased amount of rent;
- Whether the Landlord intended to occupy the unit for more than six months when the Two Month Notice to End Tenancy for Landlord's Use was served; and
- That the Landlord has not changed the address on his driver's license.

On the basis of the undisputed evidence, I find that the Landlord, his spouse, and/or his children occupied the rental unit on the following dates:

- March 01 – 04, 2022;
- April 14 – 17, 2022;
- June 30 – July 03, 2022;
- July 15 – 18, 2022;
- July 19 – 22, 2022; and
- August 22 – 28, 2022.

On the basis of the testimony of the Landlord, I find that he and/or his close family used the rental unit as a secondary residence on the aforementioned dates when they were visiting in this community.

As the Landlord and/or his close family began using the unit as a secondary residence on the first day after the effective date of the Two Month Notice to End Tenancy for Landlord's Use, I find that the Landlord complied with section 51(2)(a) of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord made some cosmetic renovations to the rental unit after the tenancy ended, which were mostly completed in February of 2022. As these renovations were primarily completed in February of 2022, which is prior to the effective date of the Two Month Notice to End Tenancy for Landlord's Use, I find that those renovations did not prevent the Landlord from complying with section 51(2)(a) of the *Act*.

As the Landlord and/or his close family began using the rental unit as a secondary residence on March 01, 2022 and they retained control of it until August 31, 2022, I find that it was used as a secondary residence for a period of 6 months and that the Landlord complied with section 51(2)(b) of the *Act*.

When a landlord ends a tenancy pursuant to section 49(3) of the *Act*, section 51(2) of the *Act* merely requires that a landlord "occupy" the rental unit for at least six months, beginning within a reasonable period after the effective date of the Two Month Notice to End Tenancy for Landlord's Use.

I respectfully disagree with Legal Counsel for the Tenant's submission that the term "occupy" requires the Landlord to use the rental unit as a primary residence, rather than a secondary residence. By using the rental unit as a secondary residence, I find that the Landlord occupied the rental unit as that term is intended to be interpreted by the legislation.

In determining that the term "occupy" includes using the unit as a secondary residence, I was guided by Residential Tenancy Branch Policy Guideline 2A. This guideline suggests that to "occupy" a rent unit means that the landlord must use the "the rental unit as living accommodation or as part of their living space". I find that using a rental unit as a secondary residence meets the definition of using it as "living accommodation".

There is nothing in the legislation or policy guidelines that requires a landlord to use the rental unit as "living accommodation" on a full time basis. I find that reaching such a conclusion would exceed the intent of the legislation, as it would prevent a landlord from regaining possession of a cabin or similar such accommodations that the landlord always intended to use as a secondary home.

Residential Tenancy Branch Guideline 2A clarifies that a landlord cannot leave a rental

unit vacant and unused if the tenancy is ended because the landlord intends to occupy the rental unit. This did not occur in these circumstances, as the Landlord furnished the unit and used it periodically for a term of 6 months.

Residential Tenancy Branch Guideline 2A suggests that using a rental unit as part of a living accommodation may include using a carriage home or secondary suite on the residential property as a recreation room. I find that a recreation room in a carriage house would not necessarily be used by a landlord on a full time basis, particularly if it is detached from the primary residence. I find that this excerpt supports a finding that a landlord can end a tenancy pursuant to section 49(3) of the *Act* even if the Landlord only intends to periodically use the rental unit as living accommodations.

I will refer to *Schuld v. Niu*, 2019 BCSC 949 in this decision, with which I am familiar, merely because it was raised by Legal Counsel for the Tenant. Although it was raised by Legal Counsel for the Tenant, I find it is significantly different than the circumstances before me and is, therefore, largely irrelevant.

In *Schuld v. Niu* the landlord ended the tenancy because the unit would be occupied by the landlord and/or close family member and the landlord did not subsequently move into the unit for any period of time. In the circumstances before me, the Landlord used the rental unit as a secondary residence between March 01, 2022 and August 31, 2022.

In my view, the direction provided by *Schuld v. Niu* is that a landlord may not end a tenancy pursuant to section 49(3) of the *Act* and then leave it entirely vacant. That did not occur in these circumstances. There is nothing in *Schuld v. Niu* that establishes a rental unit must be used as a primary residence after a tenancy is ended pursuant to section 49(3) of the *Act*. *Schuld v. Niu* does establish that a landlord must use a rental unit as a “residence for his own purposes” after a tenancy is ended pursuant to section 49(3) of the *Act*, and I am satisfied that using a rental unit as a secondary residence meets that bar.

In support of the claim for compensation, the Tenant submitted a copy of a Residential Tenancy Branch decision, dated June 18, 2020, which is identified as Decision6244. I find that circumstances of that dispute were decidedly different than the circumstances before me. In that decision the Arbitrator concluded that the landlord did not move into the rental unit. The evidence before me shows that the Landlord used the rental unit as a secondary residence. As circumstances outlined in Decision6244 are different

than the circumstances before me, I find Decision6244 does not influence my decision.

Although the Arbitrator in Decision6244 refers to good faith in the decision, it appears that the Arbitrator recognizes that good faith becomes relevant when determining whether there are grounds to end the tenancy pursuant to section 49(3) of the *Act*.

I recognize that on page 12 of Decision6244, the Arbitrator concluded that the landlord breached sections 49 and 51 of the *Act* by “not having a good faith intention for him or his close family member to occupy the rental unit within a reasonable time after the end of the tenancy”. I cannot know whether this Arbitrator truly intended to declare that “good faith intention” is required for section 51 of the *Act* is required or whether the Arbitrator mistakenly attributed the good faith requirement to section 51 of the *Act*. Regardless, I find that a conclusion that the good faith requirement is required for section 51 of the *Act* is not consistent with my understanding of the legislation and/or Residential Tenancy Branch Policy Guidelines. I am not, therefore, influenced by this excerpt of Decision6244.

In support of the claim for compensation, the Tenant submitted a copy of a Residential Tenancy Branch decision, dated March 16, 2022, which is identified as Decision1754. I find that this relevant issues in that decision are different than the circumstances before me, as that Arbitrator concluded there was a delay in the landlord moving into the rental unit. In the circumstances before me, the evidence shows that the Landlord began using the rental unit on March 01, 2022, which is the day after the effective date of the Two Month Notice to End Tenancy for Landlord's Use. As such, the issue of a delay is not particularly relevant.

I note that the Arbitrator in Decision1754 clearly concurs with my understanding that section 51 of the *Act* does not “contain a “good faith” agreement”.

In support of the claim for compensation, the Tenant submitted a copy of a Residential Tenancy Branch decision, dated February 11, 2022, which is identified as Decision1738. I find that the circumstances of that dispute were decidedly different than the circumstances before me. In those proceedings it was determined that the landlord occupied the rental unit from October 01, 2020 to November 25, 2020, at which time the unit was vacated for the purposes of a significant renovation. In that decision the Arbitrator concluded that the landlord did not live in the rental unit for “at least 6 months”. The evidence before me is that the Landlord used the rental unit as a secondary residence for 6 months. As circumstances outlined in Decision1738 are

decidedly different than the circumstances before me, I find Decision1738 does not influence my decision.

In support of the claim for compensation, the Tenant submitted a copy of a Residential Tenancy Branch decision, dated March 30, 2022, which is identified as Decision1515 and a copy of a decision, dated May 20, 2020, which is identified as K-New-Decision. I find that both decisions relate to applications to cancel a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*. As previously stated, good faith is an issue to be considered when determining whether a landlord has the right to end a tenancy pursuant to section 49 of the *Act*. In these proceedings I did not need to determine whether the landlord had grounds to end the tenancy pursuant to section 49 of the *Act* and, as such, did not need to consider the issue of "good faith". As these two decisions are decidedly different than the issues before me at these proceedings, I find they do not influence my decision.

I find there is insufficient evidence to conclude that the Landlord did not take reasonable steps to occupy the unit within a reasonable period after the effective date of the notice and/or that the Landlord has not occupied the unit for a period of at least six months. I therefore find that the Landlord is not subject to the penalty imposed by section 51(2) of the *Act* and I dismiss the Tenant's application for compensation.

I find that the Tenant has failed to establish the merit of the Application for Dispute Resolution and I dismiss the application to recover the cost of filing this Application.

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 *Act*.

Dated: November 16, 2022

Residential Tenancy Branch