



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on November 3, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 of the Act.

The Landlord was present at the hearing with his common law spouse, R.R. The Tenant also attended the hearing. All parties provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$700.00 per month. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) at the end of July 2021, and moved out on or around October 15, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *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).*
 - *The Landlord or the Landlord's Spouse*

The Tenant stated she filed this application because she believes that Landlord has failed to follow through with the grounds selected on the Notice. More specifically, the Tenant stated that the Landlord did not move in, and instead he renovated the rental unit for his common-law spouse, R.R.'s, business.

The Tenant provided some photographs taken from R.R.'s Facebook page. The Tenant provided these to show that R.R. has a business, and that she had advertised on her business Facebook page that she was using the rental unit as part of her new business space. The Tenant pointed to Policy Guideline 2A, part C, to show that the Landlord needs to occupy the rental unit for residential purposes, as part of their living space, and not use it for business.

The Landlord explained that he built and has lived in the upper portion of this house for around 40 years. The Landlord explained that this home is located on a large 12-acre property, which he uses extensively as a personal hobby farm (vegetables, herbs, fruit, chickens etc). The Landlord stated that his intention with this Notice was to reclaim this rental unit as part of his existing living space upstairs, and to share the space with his common-law partner, R.R., and her business.

The Landlord stated that R.R. is his legal common-law spouse, as per the federal income tax statements provided into evidence. The Landlord stated that this status became official in January 2020. The Landlord further stated that over the past several years, he has lived with R.R., although R.R. had her own house until she sold it in January of 2022. The Landlord stated that after the Tenant moved out in October 2021, R.R. began moving the remainder of her furniture and personal items into the Landlord's house and property. This process lasted a couple of months, and R.R. has been living with the Landlord since that time.

The Landlord explained that once the Tenant moved out, he did some cosmetic renovations, such as replacing the floors, painting, moving some cabinets etc. However, no structural or significant work was undertaken. The Landlord stated that the rental unit took up the basement floor of the house, almost entirely, except for a small storage room.

The Landlord explained that the rental unit was approximately 900 square feet. He stated that he and R.R. currently use the rental unit as follows:

550 square feet – The bedroom, bathroom, canning and storage areas are used exclusively by the Landlord and R.R. for their personal use.

350 square feet – The kitchen, office and storage are used by the Landlord and R.R. for personal use. This 350 square foot portion of the rental unit is also used, part time, as a space for R.R.'s home based business. The Landlord explained the use of this 350 square feet further in his written submission. The following is an excerpt from the Landlord's submission:

- i. Kitchen – canning products from our extensive gardens for personal use. Canning includes: tomatoes, beans, apple sauce, salsas, chutneys, etc., food processing including dehydrating vegetables for soups, making raw food, dehydrating and blending herbs for teas, tincture-making and herbal oil infusion for personal use, making home-made nettle beer and wine, making laundry soap, and formulating other personal products ([R.R.] is a Chartered Herbalist and is always experimenting with plants).*
- ii. Office – [R.R.] has only one computer and uses it for personal use including: email, Skype/Zoom calls with family and friends, internet research, Netflix, Facebook, income tax preparation and filing, banking, bill payment etc.*
- iii. Personal Storage – personal papers, artwork, equipment, seasonal supplies (camping gear etc), tax records and historical documents.*
- iv. Home-Based Business – the basement is also used to manufacture and store herbal products for [R.R.'s] part-time business – which she has run from her home for over a decade. The basement space is used to create products, manage finances, and to prepare for off-site sales. The basement contains NO retail space – there is no retail shop or display area and no customers enter the basement. The business has NO staff – [the Landlord and R.R.] do it all. Products are sold via the internet, limited wholesale and via outdoor*

farmer's markets ([local] Market 45-50 days/year and [alternative] Market 25 days/year).

The Landlord explained that the use of the rental unit is predominantly for personal use, with the majority of the space (500 sq ft) being exclusively for personal use and as part of their living accommodation, and the remainder (350 sq ft) being used as part of their living accommodation as well as a place to run their home based business.

R.R. stated that she has only one computer, for both personal and work purposes, which means that she uses the office in the rental unit for a mixture of personal and business.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord 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 (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not

established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- *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).*
 - *The Landlord or the Landlord's Spouse*

I turn to the following portion of the Act:

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.*

(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.*

I have considered the totality of evidence and testimony on this matter. I note the following relevant portions of *Policy Guideline #2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*:

Occupying the Rental Unit

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, 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 under 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.

[...]

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: Blouin v. Stamp, 2021 BCSC 411)

I note the Landlord stated he issued this Notice so that he and his common-law partner, R.R., could use the space largely for personal use, and partly for their home-based business. For the purposes of this proceeding, and under the Act, I find the Landlord's common-law wife is equivalent to a spouse, as noted under the ground selected by the Landlord on the Notice.

The Tenant does not feel the Landlord has fulfilled the grounds selected on the Notice, since he renovated the unit, and then used the rental unit as part of R.R.'s home-based business.

The Landlord provided a breakdown as to his use of the rental unit, after the Tenant moved out. Generally, I found the Landlord's explanation regarding the use of the space was detailed, clear, and compelling. I note the Landlord performed some work on the rental unit, after the Tenant moved out. However, I find the nature and scope of the work completed by the Landlord and R.R. is reasonable and is consistent with someone wishing to make the space more suitable for their occupation and use of the unit. I do not find the Landlord failed to fulfill the grounds on the Notice due to the repairs and work he completed.

With respect to the use of the space within the rental unit, I find a key point is whether or not the Landlord and his spouse, R.R., sufficiently "occupied" the rental unit, in a predominantly residential manner, for at least 6 months, following the end of the tenancy, such that they could satisfy their obligations relating to this Notice.

After considering the breakdown of the square footage of the rental unit, and the detailed explanation as to how the space is used, I find it more likely than not that the Landlord and his spouse, R.R., use 550 (bedroom, bathroom, canning and storage areas) of the overall 900 square foot rental unit exclusively as their personal space as an extension of the upstairs living accommodations. I note the Landlord stated that they use the bedroom as an actual bedroom, and they sleep in that room when temperatures upstairs are uncomfortable. The Landlord and R.R. also use the canning and storage areas for their personal consumables and preserves etc.

With respect to the remaining 350 square feet (kitchen, office, and storage), I find it more likely than not that this portion of the rental unit is mixed use. More specifically, I find that the Landlord and R.R. use the kitchen for processing their harvested food and canning their personal preserves from the farm, as well as preparing herbal products for R.R.'s home-based business. I also find R.R. uses the office for both personal and business purposes. Further, I also find the storage is mixed use as well, as it is used to

store personal paper files, tax records, art, and business files. Overall, I am satisfied that the Landlord and R.R. use most, if not all, of the rental unit as part of their living space, and a minority of the overall space is mixed-use with R.R.'s home-based business. I am satisfied that the portions of the rental unit that are used as part of R.R.'s home-based business also function as living accommodation and for their everyday occupation of the house, and the property. It appears the entirety of the rental unit is used by the Landlord to varying degrees as part of their living accommodation and any home-based business use is ancillary in nature to the overall use of the space as living accommodation.

On balance, I am satisfied that the Landlord has sufficiently demonstrated that he occupies the rental unit in compliance with his obligations under the Act. I find his use of the space is such that he has fulfilled the obligations under section 51(2) of the Act.

I dismiss the Tenant's application, in full, without leave.

Conclusion

I dismiss the Tenant's application in full, without leave.

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: November 4, 2022

Residential Tenancy Branch