Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC FFT**

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 25, 2022 (the "2 Month Notice") pursuant to sections 51(2) and 67; and
- authorization to recover the filing fee of the Application from the Landlords pursuant to section 72.

Two of the Landlords ("HG", "TG") and an agent ("ZS") of the third corporate Landlord, the Landlord's advocate ("KG") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and some of her evidence on each of the Landlords by registered mail on April 29, 2022. KG acknowledged each of the three Landlords received the NDRP Package by registered mail. I find the NDRP Package was served on each of the Landlords pursuant to section 88 and 89 of the Act.

KG stated the Landlords served their evidence on the Tenancy by email. Although there was no evidence that the parties consented to service of documents pursuant to section 43 of the *Residential Tenancy Regulations,* the Tenant acknowledged she received the Landlords' evidence. I find the Landlords' evidence was sufficiently served on the Tenant pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Additional Evidence by Tenant on Landlords

The Tenant stated she served additional evidence on the Landlords by registered mail on November 1, 2022. KG objected to the admission of the Tenant's additional evidence on the basis that it was served late. The Tenant submitted into evidence copies of the online tracking information from Canada Post that indicated the evidence was delivered to the Landlords on November 2 and 3, 2022. KG also objected to the admission of the Tenant's evidence on the basis that it was not served on the Landlords in a single package. The Tenant stated she was waiting to see if the Landlords submitted any evidence that would require she respond to it with further evidence.

Rules 3.13 and 3.14 of the RoP state:

> **3.13 Applicant evidence provided in single package**
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> Where possible, copies of all of the applicant's available evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.
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> An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution] or Rule 10 [*Expedited Hearings*].
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> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
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> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
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> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

For the purposes of calculating days, the definitions set out in the RoP states that:

> Days
>
> a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
> b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
> c) *In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
> d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.
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> [emphasis in italics added]

The Tenant submitted into evidence copies of the online tracking information from Canada Post that indicated the evidence was delivered to the Landlords on November 2 and 3, 2022. I find the Tenant's additional evidence was served on the Landlords not less than 14 days before this hearing. The Tenant stated she did not serve her evidence as one package as she was waiting to see if the Landlords served any evidence that would require her to respond with additional evidence. Although Rule 3.13 states an applicant should serve their evidence as one package, that requirement is not mandatory. I am satisfied the Tenant believed there was a valid reason for serving her additional evidence on a later date than the evidence she served on the Landlords with the NDRP Package. As such, I will admit the Tenant's additional evidence for this hearing.

Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlords in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement dated May 18, 2016 ("Tenancy Agreement") between the corporate Landlord, acting as agent for landlords, and the Tenant. ZS stated the corporate Landlord ("DPM") was acting as the property manager for HG and TG. ZS stated the property agency agreement with HG and TG was terminated. Hereinafter, when I refer to Landlords, I am referring only to HG and TG.

The Tenancy Agreement states the tenancy commenced on June 1, 2016, for a fixed term ending May 31, 2017, with rent of $1,445.00 payable on the 1st day of each month. The parties agreed the Tenant vacated the rental unit on May 31, 2021. The Landlords and Tenant agreed the rent was $1,574.00 per month when the tenancy ended. The Landlords and Tenant agreed they entered into a settlement in respect to the disposition of the security deposit.

The Tenant submitted into evidence a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 25, 2022 ("2 Month Notice") that was served on her by DPM. The effective date for move-out was May 31, 2022. The 2 Month Notice stated the reason for ending the tenancy was that the landlord or the landlord's spouse will occupy the rental unit.

The Tenant stated she moved to other accommodations nearby the rental unit. The Tenant stated she uses the bus stop located across the street from the rental unit and the curtains are always drawn and there is no evidence of lights in the rental unit. The Tenant stated that, notwithstanding she vacated the rental unit, the front door entry system of the building in which the rental unit is located, was still ringing to her mobile phone when someone sought access to the rental unit. The Tenant stated she tried the entry system for the rental unit on April 17, 2022 and the call was forwarded to her mobile phone. The Tenant submitted photographs of the rental unit taken from outside the building on various days and nights and stated she did not see any evidence of occupation of the rental unit. The Tenant stated that based on her observations, she does not believe HG or TG have occupied the rental unit. The Tenant stated she is

seeking compensation of $18,988.00 as a result of the Landlords not using the rental unit for the stated purpose in the 2 Month Notice.

KG stated the Landlords started moving furniture, cutlery and clothing into the rental unit on 1, 2021 and they have been using the rental unit for their own exclusive use since that time. KG stated the Landlords have never rented the rental unit to anyone nor have they attempted to sell the rental unit. KG stated the Landlords arranged to have the rental unit repainted commencing on June 1, 2021. KG stated the Landlords have a home in Prince George that they have listed for sale. KG stated the Landlords spend part of their time in the rental unit and part of their time in their house in Prince George.

HG stated the Landlords travel back and forth between the rental unit and the house in Prince George every four to five 5 weeks. HG stated the Landlords spend about three weeks at a time in the rental unit. HG stated the rental unit is located next to the front door of the building and the Landlords can see if anyone is at the front door who requires entry. HG stated the phone number or building entry system has not been changed because the system will not accommodate making long distance calls to their mobile phone. HG stated that, as a result of this restriction, the telephone number for the entry system used the Tenant's mobile phone number.

TG stated that, after DPM served the 2 Month Notice on the Tenant, the Landlords dismissed DPM as the property manager for the rental unit as they would no longer be renting the rental unit. TG submitted into evidence a copy of the email to DPM to corroborate her testimony.

ZS stated she went to the rental unit on June 4, 2022 to deliver a shelf for the refrigerator. ZA stated the Landlords were moving into the rental unit at the time. ZS stated there was a tradesman in the rental unit who was repairing a hole in a door.

KG stated the 2 Month Notice was served on the Tenant when section 51(2) of the Act provided that a tenant was only entitled to compensation that is equivalent of two months rent where a landlord has not occupied the rental unit within a reasonable period of time and for a minimum period of six months. KG stated that section 51(2) as it now reads did not become effective until July 1, 2021. As such, KG argued that the legal doctrine of the Presumption Against Retrospectivity applies to this case and that the Tenant is not entitled to seek compensation that is equivalent to 12 months rent. KG referred to *R. V. Dineley*, 2012 SCC 58 ("*Dineley"*) as authority for Presumption Against Retrospectivity. KG also argued that the version of section 51(2) that was in effect when the 2 Month Notice was served on the Tenant places the onus to on the Tenant to prove

that the Landlords have not used the rental unit for the stated purpose in the 2 Month Notice. To corroborate his argument, TG submitted the Province of British Columbia RTB Backgrounder *Legislative Changes to Tenancy Laws – 2021 that states:*

> *An amendment is shifting the onus to the landlord to prove they have used the property for the stated purpose of ending the tenancy. The change takes effect July 1, 2021.*

Analysis

Pursuant to Rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. I find the testimony of the Landlords and Tenants to be credible and forthcoming.

The Tenant stated she is seeking compensation of $18,988.00 as a result of the Landlords not using the rental unit for the stated purpose in the 2 Month Notice.

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[…]

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii)holds not less than 1/2 of the full reversionary interest, and

[…]

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[…]

(3) 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.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Tenant did not dispute the 2 Month Notice and was, pursuant to section 4(9), conclusively presumed to have accepted the tenancy ended on the effective date of the 2 Month Notice on May 31, 2022.

KG argued that, at the time the 2 Month Notice was served on the Tenant, section 51(2) of the Act required the Landlords, if they were in breach of section 51(2), to pay the Tenant compensation that is equivalent to two times the amount of rent payable under the tenancy agreement. I respectfully disagree. The amendment to section 51(2), that requires a landlord to pay compensation to a Tenant, that is equivalent to 12 times the amount of rent payable under the tenancy agreement, was proclaimed in force on May 17, 2018. At the time the 2 Month Notice was served on the Tenant by the Landlords, sections 51(2) and 51(3) of the Act stated:

> 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 month rent payable under the tenancy agreement if
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> (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 with 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 r the purchase, the case may be, from
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> (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.

Based on the foregoing, I find that, if the Landlords are found to be in breach of section 51(2) of the Act, then the compensation payable by the Landlords to the Tenant is an amount that is the equivalent of 12 times the month rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

> **Reasonable Period**
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> A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. […]
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> A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.
>
> **Accomplishing the Purpose/Using the Rental Unit**
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> 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.
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> 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 to a 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, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months

The Tenant testified she did not see any activity or evidence of occupation of the rental unit after she vacated it. The Tenant stated the entry system for the building in which the rental unit is occupied continued to ring to her mobile phone until at least April 17, 2022. KG and HG stated the Landlords moved into the rental unit on June 1, 2022. TG stated the Landlords dismissed DPM after they served the 2 Month Notice on the Tenant because they would not be renting the rental unit again. ZS stated she went to the rental unit on June 4, 2022 and observed the Landlords moving into the rental unit. HG stated the Landlords own a house in Prince George that they have put on the market for sale. HG testified the Landlords are currently occupying both their home in Prince George and the rental unit and that they have listed their home in Prince George for sale. HG stated the Landlords travel to the rental unit every four or five weeks and spend about three weeks at a time in the rental unit so there are periods of time when they are not in the rental unit. HG stated the entry system for the building in which the rental unit is located does not permit long distance calls to their mobile phones. HG stated that because of the limitation on the entry system, any calls at the front door continue to be forwarded to the Tenant's mobile phone. I find, on a balance of probabilities, HG's testimony for why the entry system still rings through to the Tenant's mobile to be a reasonable explanation. There is no evidence before me that the Landlords have attempted to re-rent the rental unit or put the rental unit on the market for dale. There is no requirement in section 51(2) that a landlord occupy a rental unit on a full-time basis.

KG argued that the legal doctrine of the Presumption Against Retrospectivity applies to the provisions of section 52(2) of the Act and that the Tenant is required to prove the Landlords did not use the rental unit for the stated purpose in the 2 Month Notice. However, I find that it is unnecessary for me to make a determination on this point of law. Even if the Landlord has the burden of proof, I find KG, HG, TG and ZA have provided a preponderance of testimony and evidence to prove, on a balance of probabilities, that the Landlords have accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice and has been used for that stated purpose for at least 6 months' duration. As such, I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is dismissed in its entirety 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: November 23, 2022

Residential Tenancy Branch