



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Former Tenants on March 1, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on October 25, 2022, and was attended by the Former Tenants A.J. and L.J. (Former Tenants), an agent for the Former Tenants A.G. (Agent), the Purchaser C.B (Purchaser) and legal counsel for the Purchasers J.G. (Lawyer). All testimony provided was affirmed. As the Purchaser and Lawyer acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties and their agent(s) were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it

was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Issue(s) to be Decided

Are the Former Tenants entitled to compensation from the Purchasers related to a Notice to End Tenancy for Landlord's Use of Property?

Are the Former Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the rental unit was sold by the landlord named in the tenancy agreement, and that a Two Month Notice was served on the Former Tenants at the request of the Purchasers named as respondents in the Application. The parties agreed that the tenancy ended on January 31, 2022, because of the Two Month Notice and that rent at the time the tenancy ended was \$2,000.00 per month.

The Two Month Notice in the documentary evidence before me is signed and dated November 23, 2021, has an effective date of January 31, 2022, and states that the reason the Notice has been served is because all of the conditions for the sale of the rental unit have been satisfied and the Purchasers named as respondents in the Application, have asked the landlord, in writing, to give the Notice because they or their close family member(s) intend in good faith to occupy the rental unit.

The Former Tenants stated that they are seeking 12 months compensation pursuant to section 51(2) of the Act, as neither the Purchasers nor their close family members ever occupied the rental unit and instead it was posted for re-rental at a substantially higher monthly rental rate of \$3,400.00 only a few days after they vacated. The Former Tenants stated that they do not believe that the Purchasers or their close family

member(s) ever intended to occupy the rental unit and that it was always their plan to evict them and re-rent the unit at an increased rate.

The Purchaser C.B. and their Lawyer argued that the Two Month Notice was served in good faith and that extenuating circumstances prevented them or their close family member(s) from occupying the rental unit. The Lawyer stated that the original intention at the time the property was purchased and the request for issuance of the Two Month Notice was made, was for the Purchasers H.B. and C.B. to relocate to the rental unit, along with H.B.'s father G.B., who resided with them. The Lawyer stated that C.B. was planning to transfer their employment to another location in the community in which the rental unit is located, and H.B.'s plan was to find new employment in that community.

Despite these plans, the Lawyer stated that G.B., who C.B. stated was diagnosed with stage 3 cancer in the summer of 2021, suffered a significant decline in health after the Two Month Notice was served. C.B. stated that G.B. had surgery in June of 2021, which was expected to be curative, but a scan approximately one month after surgery showed that the cancer had returned and G.B. started chemotherapy in September of 2021. The Lawyer and C.B. stated that by December of 2021, G.B.'s health had declined to such a degree that they could not even walk, and they were not expected to survive more than a few months. As a result, they stated that G.B. elected to stop treatment and return to India to visit their home and family as their last dying wish, and that G.B. was not expected to return. Flight itineraries were submitted for my review and consideration.

The Lawyer and C.B. stated that after receiving a more favourable second opinion in India, G.B. returned to B.C. but they and the Purchasers chose not to occupy the rental unit as G.B. did not want to change physicians, and C.B. and H.B. needed help from family and friends for G.B.'s care while they were at work. When asked which family members resided in their community of residence to assist with G.B.'s care, C.B. stated none. C.B. later stated that a family friend and their family member R.G., who is also one of the purchasers, provide this help, therefore they could not leave this support system behind to occupy the rental unit.

The Former Tenants called into question the testimony of C.B. and the submissions of the Lawyer that C.B., G.B., and H.B. were the intended occupants of the rental unit as no corroboratory evidence was submitted to demonstrate this was the case. Although the Purchaser and Lawyer were offered the opportunity to call witnesses during the hearing regarding who planned to occupy the rental unit, they expressly declined to do

so, and the Lawyer repeatedly argued that any such testimony would only constitute viva voce evidence.

The Former Tenants also called into question C.B.'s testimony that they had a support network of family and friends where they lived and therefore could not move with G.B. to occupy the rental unit, calling it confusing and contradictory. Finally, the Former Tenants argued that it does not make sense that G.B. would not be able to move to the rental unit as originally intended due to having to change physicians, as they were already diagnosed with stage 3 cancer and receiving cancer treatment in their community at the time the Two Month Notice was served, so this would always have been necessary. The Tenants submitted copies of advertisements for the rental unit showing it was advertised as being available for re-rental as of February 5, 2022, for \$3,400.00 per month, and argued that if G.B.'s health really had deteriorated and that really was the reason the rental unit could not be occupied by the Purchasers or their close family members, it makes no sense that the Purchasers did not advise them of this or ask them to stay.

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that the Former Tenants were served with a Two Month Notice pursuant to section 49(3) of the Act, because the 4 Purchasers asked the seller to serve one as they or their close family members intended in good faith to occupy the rental unit. I am also satisfied that the tenancy ended as a result of the Two Month Notice on January 31, 2022.

Section 51(2) of the Act states that 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:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- 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 was no debate amongst the parties that neither the Purchasers nor their close family members occupied the rental unit within a reasonable period after the effective

date of the Two Month Notice and for a period of at least six months duration thereafter. As a result, I have turned my mind to whether extenuating circumstances prevented such occupation.

Section 51(3) of the Act states that 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 applicable, from:

- accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Several medical documents were submitted which demonstrate to my satisfaction that G.B. suffers from cancer. However, I find that the matter of whether G.B. suffers from cancer is not the determinative issue here, but rather whether the Purchasers have satisfied me on a balance of probabilities that G.B.'s cancer not only deteriorated after service of the Two Month Notice, but that any such deterioration constitutes an extenuating circumstance under section 51(3) of the Act as argued at the hearing, thereby excusing the Purchasers from any obligation to pay the Former Tenants compensation under section 51(2) of the Act. For the following reasons, I am not satisfied that extenuating circumstances occurred which prevented the Purchasers or their close family members from complying with the stated purpose for ending the tenancy set out in the Two Month Notice.

Although C.B. and the Lawyer stated that G.B.'s health deteriorated significantly after the Two Month Notice was served, no corroboratory documentary evidence was submitted in support of this assertion, and I find that the medical documents submitted for my review and consideration do not satisfy me that this is the case as they do not speak to the level of deterioration suffered by G.B. since the Two Month Notice was served or include sufficient details upon which I could reasonably draw that inference.

I also found the testimony and submissions with regards to G.B.'s travel to India and their support network in the home community confusing, contradictory, and not in accordance with common sense. Although flight itineraries were submitted, the actual boarding passes were not, and as a result, I can be satisfied only of the intended dates of travel for G.B. and their family members, not the parties that actually travelled or their

actual travel dates and destinations. Further to this, the round-trip ticket for G.B. is contradictory to the submissions of the Lawyer and the statements of C.B. at the hearing that G.B. never intended to return from India. Although C.B. subsequently stated that G.B. received a more favorable second opinion in India, and therefore came home, this does not explain to me, in any logical way, why a round-trip ticket would initially have been booked for G.B. C.B. also provided contradictory testimony with regards to where the Purchaser R.M. lives, which is important as they argued that they could not move to occupy the rental unit as R.M. helps provide care for G.B.

Finally, no evidence was submitted for my consideration, other than C.B.'s testimony, which the Former Tenants called into question, that C.B., G.B., and H.B. were the intended occupants of the rental unit at the time the Two Month Notice was served, which I find to be fatal to their argument that extenuating circumstances apply. Where parties have provided contradictory but equally compelling affirmed testimony, I turn to the documentary evidence before me to resolve this dispute, most specifically the documentary evidence before me from the party with the burden of proof, which in this case is the Purchasers. Given the fact that 4 purchasers were listed on the Two Month Notice, the parties disagreement about whether C.B., G.B., and H.B. were the intended occupants of the rental unit, and the lack of documentary or other corroboratory evidence from the Purchasers that they were, I find that I am not satisfied by the Purchasers that C.B., G.B., and H.B. were the intended occupants of the rental unit. As a result, I find that their argument that extenuating circumstances under section 51(3) of the Act existed which prevented the Purchasers from complying with the stated purpose for ending the tenancy set out on the Two Month Notice would have failed, even if I had been satisfied that C.B., G.B. and H.B. were prevented from occupying the rental unit due to G.B.'s health decline, which I have already stated above I am not.

Based on the above, I therefore grant the Former Tenants' Application seeking \$24,000.00 pursuant to section 51(2) of the Act. As the former Tenants were successful in their Application, I also award them \$100.00 for recovery of the filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$24,100.00 and I order the Purchasers to pay this amount to the Former Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Former Tenants a Monetary Order in the amount of **\$24,100.00**. The Former Tenants are provided with this Order in the above

terms and the Purchasers must be served with this Order as soon as possible. Should the Purchasers 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.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render this decision and order, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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 30, 2022

Residential Tenancy Branch