



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on December 13, 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

The Tenant was represented at the hearing by an agent, S.O. (referred to as the Tenant). The purchaser of the property, and one of the named respondents was also present at the hearing. The seller and previous Landlord was not present at the hearing. All parties provided affirmed testimony. The purchaser and respondent acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package and no service issues were raised. The purchaser did not submit any documentary evidence.

Preliminary Matters – Amendment

I note the Tenant applied against the seller of the rental unit, and the purchaser. Both parties were named as Landlords and respondents. As stated in the hearing, and in accordance with section 51(2) of the Act, I find it is the purchaser of the rental unit who is potentially liable for 12 month's compensation, not the seller. It is the purchaser who asked for the 2 Month Notice to be issued, and I find he is responsible for following through with the grounds selected. Accordingly, pursuant to section 64(3) of the Act, I amend the application to remove the seller of the property as a respondent.

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

The Tenant's agent stated that monthly rent was set at \$1,650.00, and was due on the first of the month. The Tenant received the 2 Month Notice to End Tenancy for Landlord's Use (the Notice) in December 2021, and the effective date of the Notice was March 1, 2022. The Notice was issued for the following reason:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

On the second page of the Notice, the purchaser was listed, along with his address.

The Tenant's agent confirmed that he lived in the upper unit of the house and this subject rental unit was located in the basement. The Tenant's agent stated that the house sold in early 2022, and both he and the Tenant vacated their respective rental units by the effective date of the Notice. The Tenant's agent stated that he moved only 4 blocks away, so he was able to keep an eye on the house, after it was purchased and he observed the purchaser erected construction fencing, and undertook large HAZMAT abatement shortly after they moved out. The Tenant's agent also noted that as of last week (early December 2022), the entire house was torn down. The Tenant's agent stated that the Landlord should have issued a 4-Month Notice for demolition, but in any event, he did not move in, so compensation ought to be due.

The purchaser stated that he does not know either of the Tenants, and he does not know the previous owner and seller. The purchaser acknowledged that he requested vacant possession of the rental unit via the *Tenant Occupied Property – Buyer's Notice to Seller for Vacant Possession*. In this document, the seller directly asked for the

Notice to be issued pursuant to section 49 of the Act. A copy of this document was provided into evidence. The purchaser acknowledged that neither he nor his wife moved into the property. The purchaser stated that he had the house inspected before the sale completed, and they found some hazardous materials, which led to a need to remediate. The purchaser noted that he moved into an apartment in Burnaby instead because his wife has multiple sclerosis and could not live in the rental unit.

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 RENVOATIONS 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:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

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.

In this case, I note the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, which is he/his wife, or close family moved into the rental unit. The Landlord acknowledged that this did not occur. As a result, I find the Landlord breached section 51(2) of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord (purchaser) has sufficiently demonstrated that there were extenuating circumstances such that he should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The purchaser asserted that his wife has multiple sclerosis, and that there was hazardous materials in the building that required remediation. However, I find the purchaser's explanation lacked clarity and detail, and I note he provided no corroborating documentary evidence supporting his wife's medical issues, the presence of hazardous materials, and why it would not have been feasible to move in given the circumstances. It appears the purchaser had alternate plans with the house, other than remediating and moving in, given it has since been demolished. Ultimately, I am not satisfied that there were any "extenuating circumstances", such that it would be unreasonable or unjust for the purchaser to pay the compensation.

I award the Tenant \$19,800.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,650.00. Further, pursuant to section 72 of the Act, I award the recovery of the filing fee paid, \$100.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$19,900.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: December 14, 2022

Residential Tenancy Branch