



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 April 20, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 07, 2022 was sent to the Landlord, via registered mail. The Tenant submitted a Canada Post receipt that corroborates this statement. The female Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 05, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was posted on the Tenant's door on December 05, 2022. The Tenant stated that she located this evidence in her mailbox on December 05, 2022, she has had sufficient time to consider the evidence, and she does not need an adjournment for the purposes of considering the evidence. As the Tenant acknowledged receiving this evidence and she has had sufficient time to consider it, the evidence 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, 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. Each participant affirmed they would not record any portion of these proceedings. Legal Counsel for the Landlord assured me he would not be recording the proceedings.

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 in 2016; that rent was due by the 15th day of each month; and that her monthly rent, at the end of the tenancy, was \$1,600.00.

The female Landlord stated that the rental unit was purchased on January 31, 2022; that she does not know how much rent the Tenant was paying; and she does not know when the tenancy began.

The Tenant stated that the rental unit was vacated on January 21, 2022. The female Landlord stated that she does not know when the unit was vacated.

Legal Counsel for the Landlord stated that the Tenant has not served any documentary evidence to establish that she was a tenant in the rental unit.

The Tenant stated that her original landlord served her with a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*, on November 26, 2021. The Two Month Notice to End Tenancy for Landlord's Use, which was submitted

in evidence, declares that the rental unit must be vacated by January 31, 2022, and that the tenancy is ending because all of the conditions for the sale of the unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The female Landlord agreed that the Landlord, or a person acting on behalf of the Landlord, provided the former owner with written notice that the Landlord wanted vacant possession of the rental unit. A copy of that document was submitted in evidence.

The female Landlord stated that:

- When the Landlord asked for vacant possession of the rental unit, the Landlord intended to move into the unit;
- Prior to purchasing the rental unit, the Landlords were living with two brothers-in-law in a home that was jointly owned with those individuals;
- The Landlords are still living in the home with the families of the brothers-in-law;
- When the rental unit was viewed on January 31, 2022, the Landlord decided that renovations were needed;
- The Landlord made several upgrades, including replacing flooring, re-painting, repairing the roof, repairing/replacing sinks and taps, dividing one room into two rooms, renovating the entire kitchen, replacing some electrical fixtures, and replacing the front door;
- The Landlord did not realize these repairs/renovations were needed until they viewed the unit on January 31, 2022;
- The renovations started in early February and were completed near the end of April of 2022;
- The photographs of the unit the Landlord submitted in evidence were taken at the end of March or the beginning of April;
- Some renovations were incomplete when those photographs were taken;
- The renovations cost a lot of money;
- While they were renovating, interest rates increased significantly;
- Because of the increase in interest rates, the Landlord could not afford the monthly mortgage payments;
- They did not anticipate the increased lending costs;
- The rental unit was placed on the rental market on April 07, 2022;
- The rental unit was re-rented to a third party for May 01, 2022; and
- In June or July of 2022, they attempted to sell the unit but it has not yet sold.

In a written affidavit the Landlord declared that he did not anticipate the need for renovations because he did not view the rental unit prior to purchasing it.

Legal Counsel for the Landlord stated that the Landlord had a line of credit on the other home he co-owned and he could not afford to move into the rental unit. He stated that no bank records were submitted to establish that the Landlord could not afford to make mortgage payments.

The female Landlord stated that the mortgage payment for the unit is \$3,400.00 and the new rent is \$2,100.00.

The Tenant stated that she thinks the renovations were completed by April 07, 2022.

Analysis

On the basis of the testimony of the Tenant, I find that the Tenant entered into a tenancy agreement with the former owner of the rental unit.

I find that the Two Month Notice to End Tenancy for Landlord's Use which was submitted in evidence, in which the former owner of the unit served the Tenant with notice to end the tenancy, strongly supports the Tenant's testimony that a tenancy existed.

On the basis of the testimony of the Tenant, I find that at the end of the tenancy, the monthly rent was \$1,600.00. In the absence of evidence to the contrary, I find that this is the best evidence in regard to the rent due at the end of the tenancy. I note that the Tenant submitted 2 e-transfers in the amount of \$1,600.00 which supports this testimony, although they were sent to an individual with a similar first name of the former landlord.

On the basis of the testimony of the Tenant, I find that the rental unit was vacated on January 21, 2022. In the absence of evidence to the contrary, I find that this is the best evidence in regard to the date the unit was vacated.

On the basis of the testimony of the Tenant, I find that the previous owner of the rental unit served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use on

November 26, 2021. In the absence of evidence to the contrary, I find that this is the best evidence in regard to the service date of the Two Month Notice to End Tenancy for Landlord's Use.

On the basis of the Two Month Notice to End Tenancy for Landlord's Use submitted in evidence, I find that the Notice was served because all of the conditions for the sale of the unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or close family member intends in good faith to occupy the rental unit. I further find that the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by January 31, 2022.

Section 51(2)(a) of the *Act* stipulates that 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, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find it entirely reasonable for a landlord to make cosmetic changes to a rental unit before they move into it. Even if I accepted the Landlord's submission that it took almost 3 months to renovate the unit, I would conclude that the Landlord took reasonable steps to occupy the rental unit, providing the Landlord subsequently moved into the rental unit. In these circumstances, however, the Landlord did not move into the rental unit. Rather, the unit was rented to a third party on May 01, 2022.

Section 51(3) of the *Act* permits me to excuse a landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under section 51(2) if, in my 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.

Residential Tenancy Branch Policy Guideline #50, with which I concur, reads, in part:

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal

requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

While I accept the Landlord's submission that he chose not to move into the rental unit for financial reasons, I find that the Landlord has submitted insufficient evidence to establish that he was unable to move into the rental unit for financial reasons. In reaching this conclusion I was influenced, in part, by the absence of any evidence, such as bank statements, that establish there was a significant change in the Landlord's financial circumstances.

In concluding there was insufficient evidence to establish that the Landlord was unable to move into the rental unit for financial reasons, I was further influenced by the absence of evidence that establishes interest rates rose dramatically between the time the Two Month Notice to End Tenancy for Landlord's Use was served on November 26, 2021 and the time the renovations were allegedly completed at the end of April of 2022. Although I am fully aware that lending rates have increased dramatically recently, it is not for me to investigate the amount those rates increased between November 26, 2021 and April 30, 2022. That information should have been provided by the Landlord if the Landlord intended to rely on this submission.

In concluding there was insufficient evidence to establish that the Landlord was unable to move into the rental unit for financial reasons, I was further influenced by the fact the Landlord renovated the rental unit when it was vacated. Although the Landlord submits that the rental unit was in very poor condition, the Landlord submitted no corroborating evidence, such as photographs, that establish that the rental unit was uninhabitable on January 31, 2022. In the absence of evidence to establish that the unit was uninhabitable, I am unable to conclude that the decision to renovate was anything more than a personal choice.

The Landlord's own evidence is that the renovations were expensive. While the cost of the renovations obviously had an impact on the Landlord's financial circumstances, there is insufficient evidence to establish those costs were absolutely necessary.

After considering the Landlord's submission in its entirety, I am not satisfied that there were extenuating circumstances that prevented the Landlord from moving into the rental unit. This finding is, in my view, consistent with the examples provided in Residential Tenancy Branch Policy Guidelines. Not adequately budgeting for possible mortgage rate increases and planned renovations is similar, in my view, to a landlord who did "*not adequately budget for the renovations and cannot complete them because they run out of funds*". (Bullet 6 of above Policy Guideline excerpt)

As I have found that the Landlord did not move into the rental unit and I have not excused the Landlord from paying the penalty imposed by section 51(2)(a) of the *Act*, I find that the Landlord must pay the Tenant \$19,200.00, which is the equivalent of 12 times the monthly rent.

I find that the Tenant's application has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

I find that the Tenant has established a monetary claim of \$19,300.00, which includes for \$19,200.00 pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

I grant the Tenant a monetary Order in the amount of \$19,300.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 *Act*.

Dated: December 13, 2022

Residential Tenancy Branch