



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing dealt with the Applicants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Respondent, his Translator, and the Applicants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicants testified that they served the Respondent with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on April 29, 2022 by Canada Post registered mail (the "NoDRP package"). The Applicants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Respondent was deemed served with the NoDRP

package five days after mailing them, on May 4, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Applicants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Applicants entitled to an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property?
3. Are the Applicants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants uploaded a copy of the tenancy agreement and confirmed that this tenancy began as a fixed term tenancy on February 15, 2020. The fixed term ended on February 15, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,800.00 payable on the first day of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and was returned to the Applicants at the end of the tenancy. The tenancy ended on January 31, 2022.

The Applicants testified to being personally served with the Section 49 Two Month Notice on November 21, 2021. The reason to end tenancy noted on the Respondent's Two Month Notice was that 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. The effective date on the Two Month Notice was January 31, 2022.

During a home inspection, the buyer came to the residential property to look at the home. The female Applicant asked him if he would be moving him, and she testified that he told her he was not, that it was just an investment property. The Applicant subsequently spoke to the Respondent's real estate agent who said she would get a message to the buyer's real estate agent. When the message came back to the Applicants, they were told that the Respondent did plan on moving into the residential property.

On March 16, 2022, the Applicants saw the home advertised for rent on Facebook Marketplace for \$4,300.00 per month. The Applicants spoke to their former neighbours who confirmed to them that no one had moved into the home. The Applicants testified that the house is a 1.2 million dollar home, and the Respondent must have had to put down a lot of money to buy the home.

The Applicants seek \$33,600.00 compensation, 12 month's rent, as the Respondent did not establish that the stated purpose for which the tenancy was ended was accomplished. The Applicants do not have another monetary claim, although noted in the claim codes. They agreed to withdraw their other monetary claim; however, they still seek the return of the application filing fee.

The Respondent's spouse's father became critically ill mid February 2022, and the Respondent travelled to another international city to support his wife with her ill father. The Respondent uploaded a medical certificate attesting to the admission of his father-in-law to a hospital in the other international city. He uploaded passport travel stamps which showed he landed in the other city on February 21, 2022 and he departed back to Canada on March 13, 2022. The Respondent's wife and child did not return to Canada with him.

The Respondent never moved into the residential property. Instead, he testified that his cousin moved into the rental unit. The Respondent still lives in his townhouse in the same city as the residential property. The Respondent testified that he had a lot of stress because of the purchase of the new home. He stated when he went to the other international city he took out a loan. The Respondent uploaded the loan agreement document attesting to those loan proceeds.

The Respondent said he does not collect rent from his cousin, instead his cousin assists him financially with other bills and buying groceries. The Respondent asked his cousin's brother to put the house up for rent on Facebook Marketplace for \$4,300.00. On May 1, 2022, the Respondent secured new tenants in the residential property at a rental rate of \$4,000.00 per month.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus

to prove their case is on the person making the claim. In most circumstances this is the person making the application; however, in some situations the arbitrator may determine the onus of proof is on the other party.

The Respondent ended the tenancy with the Applicants for Landlord's Use. The stated purpose proffered by the Respondent in the Two Month Notice was that 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 find that the Respondent has the onus to demonstrate that the purchaser (the Respondent) or a close family member intends in good faith to occupy the rental unit for at least six months and that they had no dishonest motive.

Pursuant to Section 49 of the Act, a close family member means, in relation to the Respondent, the Respondent's parent, spouse or child, or the parent or child of the Respondent's spouse.

Section 51(2) and (3) of the Act state:

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 the landlord or purchaser, as applicable, does not establish that*
 - (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
 - (b) *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.*
- (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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and*
- (b) 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.*

Neither the Respondent nor a close family member moved into the residential property. After the international trip to support his spouse with her ill father, the Respondent returned to Canada in mid March 2022. The Respondent's cousin advertised the residential property for rent on Facebook Marketplace. The Respondent secured new tenants in the rental unit for May 1, 2022, and accordingly I find that the stated purpose for ending the tenancy was not accomplished by the Respondent.

RTB Policy Guideline #50-Compensation for Ending a Tenancy assists the public addressing requirements for a landlord to pay compensation to a tenant when:

...
a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given;
...

I find the Respondent failed to use the rental unit for the purpose for which the notice was given pursuant to Section 51(3)(b) of the Act. The Respondent described a family emergency situation which he attended to, then returned to Canada. The Respondent still did not move into the rental unit. The Respondent said he suffers from financial difficulties. RTB Policy Guideline #50 discusses what may be considered an extenuating circumstance:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from

accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. 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.*

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.*

The Respondent attended to a family emergency in another international city. However, when the Respondent returned, he still did not move into the rental unit as the noted stated purpose in the Two Month Notice described. I do not find the Respondent's financial difficulties an extenuating circumstance that stopped the Respondent from accomplishing the stated purpose within a reasonable period which would make it unreasonable or unjust to hold the Respondent to his legislated responsibilities. I find the Respondent did not accomplish the stated purpose for ending the tenancy for Landlord's Use and he is not excused from paying compensation to the Applicants specified under Section 51(2) of the Act.

The Applicants are entitled to compensation in the amount of **\$33,600.00** pursuant to Section 51(2) of the Act. As the Applicants are successful in their claim, they are entitled to recovery of the application filing fee. The Applicants total Monetary Award is determined to be \$33,700.00.

The Applicants claim for compensation for a monetary loss or other money owed is dismissed.

Conclusion

I grant a Monetary Order to the Applicants in the amount of \$33,700.00. The Respondent must be served with this Order as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and 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 Act.

Dated: December 22, 2022

Residential Tenancy Branch