



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for compensation from the landlord for monetary loss under the *Act*, regulations and/or tenancy agreement; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants, the landlord and the landlord's wife attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Both parties agreed that the landlord was served with the tenants' application for dispute resolution and first evidence package via registered mail. I find that the above documents were served in accordance with section 88 and 89 of the *Act*.

The tenants testified that they served the landlord with their second evidence package via registered mail on January 7, 2023. The tenants did not enter into evidence proof of service documents pertaining to the second evidence package. The landlord testified

that he did not receive the second evidence package. I find that the tenants have not proved, on a balance of probabilities, that the landlord was served with the second evidence package, I therefore exclude the tenants' second evidence package from consideration.

The landlord testified that the tenants were served with the landlord's evidence via registered mail. The tenants testified that they received the landlord's evidence sometime in December 2022. I find that the tenants were served with the landlord's evidence in accordance with section 88 of the *Act*.

Issue

Are the tenants entitled to Monetary Compensation pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2018 and ended on January 31, 2022 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") dated December 10, 2021. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The Notice was entered into evidence and states that the reason for the Notice is that:

The rental unit will be occupied by the landlord or the landlord's spouse.

The tenants testified that the landlord never moved into the subject rental property as stated on the Notice. The tenants testified that the landlord never intended on moving into the subject rental property and therefore gave them the wrong notice to end tenancy. The tenants testified that they are seeking 12 months compensation pursuant

to section 51 of the *Act* because the landlord did not comply with the reasons to end the tenancy stated on the Notice.

The landlord testified that he purchased the subject rental property in 2016 with the intent of removing the existing home and building an age in place home for his retirement. The landlord testified that when the home was purchased, he was not ready to build and so he rented the subject rental property out.

The landlord testified that in October of 2021 he entered into a contract with a company to sell the subject rental property and have it barged off the land to make space for new construction. The aforementioned contract was entered into evidence.

The landlord testified that when he and his wife were ready to move forward with building their new home, they asked their property management company to give the tenants notice to vacate, and the property management company sent the Notice. The landlords entered into evidence an email dated November 29, 2021 to their property management company that states:

As it stands, we'll be moving to the [subject rental property] March 1.
It's possible the date might be a month or two later, but regardless the die seems pretty cast.
When do we need to advise the tenants?

The property manager responded on November 29, 2021 as follows:

Thank you. This means we must provide the two month notice to the tenant mid December and then they will be required to move out by February 28th. They will not pay rent for February as this covers the required compensation. We will prepare the document (which includes all the details and landlord and tenant obligations) with your name listed as the owner, I will get you to sign and we will deliver it with proper notice. The tenants know this is coming and so this shouldn't be a surprise.

The landlord testified that the Notice was served on the tenants through the property management company but he did not know on what day. The tenants testified that they received the Notice on December 23, 2021 via email and on January 3, 2022 via registered mail. The tenants testified that they provided the landlord's property management company with notice to end the tenancy earlier than the effective date on the Notice. The landlord did not dispute that their property management company

received appropriate notice to end the tenancy before the effective date of the Notice. Both parties agree that the tenants moved out on January 31, 2022.

The landlord testified that after a meeting with his contractor in February of 2022 it became apparent that the cost of building the new home was approximately double what he had previously estimated. The landlord testified that in February and March of 2022 the timeline for construction also became an issue as it would take double the time to build than previously expected.

The landlord testified that to make matters worse he and his wife had a ruling made against them from Revenue Canada which greatly reduced their building fund. The landlord testified that when they realized that they could not afford to build a new home on the land on which the subject rental property sits, they considered a number of different options, including moving into the subject rental property. The landlord testified that they consulted their contractor about making repairs to the property, but it was not possible due to the condition of the foundation and that the stairs at the subject rental property made it unsuitable for his wife due to her health. The landlord testified that in the end, they decided to list the subject rental property for sale, and it sold in April of 2022.

Analysis

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

(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.

Residential Tenancy Policy Guideline #2A states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

I find that it undisputed between the parties that the landlord did not move into the subject rental property after the tenants were evicted and that the landlord sold the subject rental property in April of 2022. Pursuant to my above findings, I find that the landlord did not accomplish, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and did not use the rental unit for the purpose specified in the Notice for at least 6 months' duration. Pursuant to section 51(2) of the *Act*, I find that the tenants are entitled to 12 months' rent compensation unless the landlord can prove that extenuating circumstances prevented the landlord from moving in, pursuant to section 51(3) of the *Act*.

Residential Tenancy Branch Policy Guideline #50 states:

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.

Residential Tenancy Branch Policy Guideline 2 A states:

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

The landlord testified that when the Notice was served, the landlord and his wife never intended on moving into the subject rental property but planned on having the property barged away and building a new home in its place. As the landlord did not have any intent on occupying the property (using the rental unit as living accommodation) when the Notice was served, the landlord did not have the right to end the tenancy by way of the Notice.

I find that failure of the landlord to move in did not arise from an extenuating circumstance but was always part of the plan. While I find that the landlord did honestly intend to remove the subject rental property and build a new house, I find that the landlord was not permitted to use the Notice to evict the tenant because the Notice states that the landlord would occupy the subject rental property which was never the

intent of the landlord.

As I have found that the landlord did not have extenuating circumstances that prevented him from moving in, pursuant to section 51(2) of the *Act*, I award the tenants 12 months rent in the amount of \$27,600.00 (\$2,300.00 * 12).

As the tenants were successful in this application for dispute resolution, I find that the tenants are entitled to recover from the landlord the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$27,700.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 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: January 24, 2023

Residential Tenancy Branch