



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 20, 2023 by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on September 3, 2022 and has provided a Registered Domestic Customer Receipt addressed to the landlord as well as a Canada Post cash register receipt and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence provided by the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord has failed to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 14, 2018 and reverted to a month-to-month tenancy after September 30, 2019. The tenants vacated the rental unit on January 31, 2022. Rent in the amount of \$1,800.00 was originally payable on the 1st day of each month, which was raised to \$1,845.00 per month effective November 1, 2019. On September 4, 2018 the landlord collected a security deposit from the tenants in the amount of \$1,800.00, and the parties agreed that half was for the security deposit and the other half for a pet damage deposit. The tenants agreed at the end of the tenancy that the landlord could keep a portion for carpet cleaning, and the landlord returned the balance of the deposit to the tenants. The rental unit is a condominium apartment, and the landlord did not reside in the building during the tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord sold the rental unit and sent an email to the tenants requesting the tenants to move out by February 28, 2022. The landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property which was accompanied by a "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession," a copy of which has been provided for this hearing stating that a contract of purchase and sale was completed on November 28, 2021. The Notice to end the tenancy stated that all conditions for the sale of the rental unit have been satisfied and the buyer or a member of the buyer's family intend in good faith to occupy the rental property, and the tenants must vacate by February 28, 2022.

The tenants were permitted to provide a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property after the hearing had concluded. I have now received it, and it is dated December 7, 2021 and contains an effective date of vacancy of February 28, 2022. The reason for issuing it is as stated by the tenant in his testimony.

The tenant further testified that the purchaser sold the rental unit on April 28, 2022 and the tenants have provided a BC Assessment document showing that the rental unit sold on November 28, 2021 and again on April 28, 2022.

The tenants have also provided a copy of a letter received from the purchaser's lawyer stating that the rental unit was left uninhabitable by the tenants, and the buyer had to renovate, and extenuating circumstances prevented the purchaser from accomplishing the stated purpose.

Analysis

The “landlord” in this case is the purchaser, who asked the landlord of the tenants to issue the Notice to end the tenancy.

The *Residential Tenancy Act* specifies that a purchaser, who has asked a landlord to give a notice upon sale of rental property, must intend in good faith to occupy the rental unit:

49 (5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The *Act* also contains punitive damages regarding ending a tenancy for the purchaser’s use of the property:

(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.

Considering the BC Assessment document, showing that the rental unit sold on November 28, 2021 and again on April 28, 2022, I am satisfied that the purchaser has not accomplished the stated purpose for ending the tenancy. There is no evidence of extenuating circumstances. Therefore, I find that the tenants have established a claim of 12 times the monthly rent, or \$22,140.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the purchaser in the amount of \$22,240.00. The purchaser must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the purchaser in the amount of \$22,240.00.

This order is final and binding and may be enforced.

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 22, 2023

Residential Tenancy Branch