



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

In this application for dispute resolution, the tenants applied on May 2, 2022 for compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issue to be Decided

Are the tenants entitled to compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?

Background and Evidence

While I have considered the testimony and presented documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenants were living in the unit when it was purchased by the new landlord in December 2021, and that the tenants had paid rent in the amount of \$1,025.00 a month.

A copy of the tenancy agreement between the tenants and the selling landlord was submitted as evidence; it indicates that rent was \$1,025.00.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 13, 2022, is submitted as evidence and indicates an effective date of March 15, 2022. It states the landlord or a close family member will occupy the rental unit.

The landlord submitted that the correct effective date for the Two Month Notice is March 31, 2022.

The landlord testified that after a sewer backup in July 2021, most of their house had to be gutted, requiring them to move out during the process. The landlord purchased the rental unit to provide her family with a place to live during the renovation. The landlord's written submission states: "my insurance company planned renovation for entire house." [Reproduced as written.]

The landlord testified that later in January 2022, after she served the tenants with the Two Month Notice, she purchased a second unit in the same building, and a pipe in that unit burst in February 2022, resulting in major damage to the unit and damage to a neighbouring unit. The landlord submitted she had to pay for all of the restoration herself, and that the costs were not covered by insurance. The landlord testified she had used her life savings to purchase the two units.

The landlord testified that she and her family moved into the rental unit at the end of April 2022, but the landlord was forced to sell the unit due to financial hardship, and listed it for sale on April 26, 2022. The landlord testified they moved out of the rental unit on June 25, 2022.

The tenants did not dispute the landlord's testimony, but submitted that while they sympathized with the landlord's predicament, it was not the tenants' responsibility to subsidize the landlord.

Analysis

Section 51(2) of the Act states:

- (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.

[Policy Guideline 2A](#): *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides that:

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.

Section 51(3) permits an arbitrator to excuse a landlord if, in the arbitrator's opinion, extenuating circumstances prevented the landlord 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.

The landlord testified she purchased the rental unit to occupy it, yet did not arrange for vacant possession of the rental unit in the contract to purchase the rental unit. The landlord testified she purchased the rental unit in December to occupy it because her primary residence was under restoration, yet the sewer backup occurred many months earlier. On a balance of probabilities, I find it is more likely than not that the landlord did not need to occupy the rental unit because of the sewer backup in her primary residence.

The landlord testified she could not afford the cost of unexpected restoration expenses for a second property she purchased after purchasing the rental unit. The restoration expenses were allegedly outside of her control and caused her to list the rental unit for sale three days prior to when she moved in. The landlord did not explain why the

restoration was not covered by insurance. The landlord did not provide any financial records to substantiate the restoration expenses.

I cannot find the landlord experienced circumstances beyond her control that prevented her from occupying the rental unit for six months. For reasons noted above, the landlord has not convinced me on a balance of probabilities that she purchased the rental unit to occupy it because of a sewer backup in her primary residence. The landlord has not convinced me on a balance of probabilities that financial hardship due to restoration costs caused her to sell the rental unit because home insurance is how property owners shield themselves from financial hardship and the landlord did not explain why insurance did not cover the restoration expenses. The landlord has not convinced me on a balance of probabilities that financial hardship caused her to sell the rental unit because she did not provide any financial records to demonstrate her financial hardship.

Based on the landlord's affirmed undisputed testimony, I find she did not occupy the rental unit for a minimum of 6 months, and, on a balance of probabilities, did not prove there were extenuating circumstances beyond her control. I find the landlord has not met her obligation under the Act, so pursuant to section 51(2), owes the tenants 12 times the monthly rent of \$1,025.00 payable under the tenancy agreement: \$12,300.00.

The tenants are entitled to a monetary order in the amount of \$12,300.00 for 12 times the rent.

Conclusion

The tenants are granted a monetary order for \$12,300.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 17, 2023

Residential Tenancy Branch