Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding G AND G ABBOTT FAMILY TRUST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

On January 31, 2022, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the "*Act*") and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

On February 9, 2022, this Application was originally set down to be heard on May 10, 2022, at 1:30 PM. This Application was subsequently adjourned, for reasons set forth in the Interim Decisions dated May 10, 2022. This Application was then set down for a final, reconvened hearing on January 10, 2023, at 1:30 PM.

The Tenant attended the final, reconvened hearing. G.A. and B.M. attended the final, reconvened hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, service of the Notice of Hearing and evidence packages was discussed, and there were no issues with service. As such, I have accepted the parties' documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to an additional Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2020, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 1, 2021, after being served the Notice. Rent was established at an amount of $2,150.00 per month and was due on the first day of each month. A security deposit of $1,075.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

As well, all parties also agreed that the Tenant was served the Notice on May 28, 2021. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." Moreover, the Landlord checked off the box that the rental unit will be specifically occupied by "The child of the landlord or the landlord's spouse." The effective end date of the tenancy was noted as July 31, 2021, on the Notice.

The Tenant's Application included a Monetary Order Worksheet totalling a claim for $27,777.75. The main claim was for 12 months' compensation in the amount of **$25,800.00**, there were three other claims relating to moving, and there was one claim for a greenhouse. I note that there are no provisions in the *Act* to compensate a party

for moving costs. As well, it was not clear what the claim for the greenhouse pertained to. As such, the claims for moving costs are dismissed without leave to reapply, and the claim for the greenhouse is dismissed with leave to reapply. The only claim that was dealt with in this hearing pertained to the 12 months' compensation.

G.A. advised that the Landlord owned the property for a long period of time, and that the intention was to pass this onto to his children. He testified that the Tenant was provided with a one-year, fixed term tenancy agreement so that his two sons could have time to move into the rental unit. He then stated that his one son applied for dental school in or around mid-June 2021, and that this was a "hail Mary" application as there was little expectation that he would be accepted. However, the surprising acceptance of his son into this dental school changed the "trajectory" of their plan as the school was in Vancouver.

Moreover, he submitted that his other son could not afford to live in the rental unit by himself, nor could he live with anyone other than his brother due to personal and medical circumstances. As a result, the Landlord listed the rental unit for sale on August 16, 2021, and it was sold within a week. He advised that the one son being accepted into dental school was the extenuating circumstance which prevented the Landlord from using the rental unit for the stated purpose on the Notice.

The Tenant made submissions on issues that were not relevant to the reason on the Notice, and he then talked about the difficulties of having to move after being served the Notice. However, the only relevant submission that he made was that the rental unit was put up for sale and then sold approximately two weeks later.

At both hearings, there were some discussions regarding attempting to settle the matter; however, those discussions were not successful.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental

unit where the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord served the Notice because it was the intention of G.A. to have his sons to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated May 28, 2021, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***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*
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> > *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> > *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

At the time the Notice was served, G.A. advised that the intention was for his sons to move into the rental unit, and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after he gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
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> A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about 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:
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> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations."

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlord or close family member only, which included the children of the Landlord or Landlord's spouse. However, the consistent and undisputed evidence is that none of these people moved into the rental unit, and that it was sold in mid-August 2021. As the rental unit was clearly not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

In considering G.A.'s submissions, I acknowledge that the Landlord's plan was for the sons to move into the rental unit. However, while it was G.A.'s position that his son being accepted into dental school was not expected, given that the son elected to apply for dental school in another city, I find it reasonable to conclude that being accepted into this school would have been one possible outcome.

Furthermore, I find it important to note that the son's application to dental school was made in or around mid-June 2021, which was weeks after the Notice was served to the Tenant. Given that the Notice had already been served for the sons to occupy the rental unit, this application being made afterwards would appear to indicate that there was some consideration by the one son of contemplating possibly not moving into the rental unit after service of the Notice. For these reasons, I do not accept that this acceptance into dental school would qualify as an extenuating circumstance as this outcome could have been reasonably anticipated.

As I am not satisfied that the Landlord has submitted compelling or persuasive evidence to demonstrate that there was an extenuating circumstance that prevented the Landlord's sons from occupying the rental unit for at least six months after the effective

date of the Notice, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$25,800.00**.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **$25,800.00** 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 20, 2023

Residential Tenancy Branch