



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 13, 2022, wherein the Tenant sought monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act").

The hearing was conducted by teleconference at 1:30 p.m. on December 20, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on December 20, 2022. This Decision was rendered on January 23, 2023. Although section 77(1)(d) of the

Residential Tenancy Act provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

In support of his claim the Tenant testified as follows. He stated that his tenancy began February 5, 2017. Monthly rent was \$2,500.00.

The Tenant received a 2 Month Notice to End Tenancy for Landlord's Use dated September 9, 2021 (the "Notice"), a copy of which was provided in evidence before me. The Notice indicated the Landlord's child, or the Landlord's spouse' child, intended to reside in the rental unit. The effective date of the Notice was November 31, 2021 although the Tenant exercised his option to end his tenancy early and moved out as of November 1, 2021.

The Tenant submitted that the rental unit was not occupied by the Landlord's child, nor the Landlord's spouse' child as it was sold on March 1, 2022. In support he provided an online listing confirming the property had sold.

The Landlord's agent confirmed he issued the Notice on behalf of the owner. He further confirmed that it was his understanding the owner's family occupied the rental unit and was unaware it was sold until he received the Tenant's evidence package. The Landlord's agent did not provide any submissions with respect to any extenuating circumstances which might relieve the Landlord of paying compensation to the Tenant.

Analysis

The Tenant seeks monetary compensation pursuant to section 51(2) of the *Act*. Section 51 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the

landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

(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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In order to determine whether the Tenant is entitled to compensation pursuant to section 51(2) I must determine whether the Landlord took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

The Notice indicated the property would be occupied by the Landlord's child. I accept the Tenant's evidence that the property was not occupied by the Landlord's child, but was in fact sold such that it was not used for the stated purpose. This was not disputed by the Landlord's agent.

As the property was sold during the six-month period after the effective date of the Notice and not occupied by the Landlord's child, I find the property was not used for the stated purpose on the Notice as required by the *Act*.

The Landlord's agent did not provide any submissions with respect to potential extenuating circumstances pursuant to section 51(3) which may relieve the Landlord of the obligation to pay the 12 months compensation. I accept the agent's testimony that he issued the Notice on the Landlord's instructions and believed the Landlord intended to use the property for the stated purpose and was not aware it had sold until receiving the Tenant's evidence package.

I therefore find, pursuant to section 51(2) of the *Act*, that the Tenant is entitled to monetary compensation equivalent to 12 months of the monthly rent payable under the tenancy agreement.

I find that the monthly rent was \$2,500.00. As such, the Tenant is entitled to the sum of **\$30,000.00** representing 12 months of rent at \$2,500.00 per month.

Conclusion

The Tenants' application for monetary compensation pursuant to section 51(2) is granted. Pursuant to section 67 of the *Act*, the Tenant is entitled to a Monetary Order in the amount of **\$30,000.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 23, 2023

Residential Tenancy Branch