



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application, filed on May 29, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$25,200.00 for compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 15, 2022 ("2 Month Notice"), and the landlords have not complied with the Act or used the rental unit for the stated purpose, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Tenant JW" did not attend this hearing. The two landlords, landlord SM ("landlord") and "landlord MM," the landlords' agent, and tenant CW ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 minutes from 1:30 p.m. to 2:18 p.m.

The landlords intended to call 2 witnesses, who were excluded from the outset of this hearing. At the end of this hearing, I informed the landlords and their agent that I did not find it necessary or relevant to hear from their 2 witnesses. I notified them that their witness regarding service of the 2 Month Notice was not required, since the tenant confirmed receipt of the 2 Month Notice, during this hearing. I informed them that their realtor witness was not required to talk about what she told prospective purchasers or about listing the rental unit for sale, since the rental unit was not sold after the tenants vacated. The landlords' agent affirmed his understanding of and agreement to same. The tenant did not object to or dispute same during this hearing.

All hearing participants confirmed their names and spelling. The landlords' agent and the tenant provided their email addresses for me to send copies of this decision to both parties after the hearing.

Both landlords confirmed that they co-own the rental unit. The landlords' agent provided the rental unit address. Both landlords confirmed that their agent had permission to represent them at this hearing. Both landlords identified their agent as the primary speaker for them at this hearing. The landlords' agent confirmed that landlord MM is the father of the landlord.

The tenant confirmed that she had permission to represent tenant JW at this hearing (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application during this hearing, and declined to do so.

I repeatedly cautioned the tenant that if I dismissed the tenants' application without leave to reapply, the tenants would receive \$0. The tenant repeatedly affirmed that the tenants were prepared for the above consequences if that was my decision.

I repeatedly cautioned the two landlords that if I granted the tenants' entire application, the landlords would be required to pay the tenants \$25,300.00 total, including the \$100.00 application filing fee. Both landlords repeatedly affirmed that they were prepared for the above consequences if that was my decision.

The landlords' agent confirmed receipt of the tenants' application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence. In

accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

The tenant confirmed receipt of the landlords' 2 Month Notice. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the landlord's first name. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation, pursuant to section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

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

Both parties agreed to the following facts. The tenants began living at the rental unit on May 1, 2017, pursuant to a tenancy agreement with the former landlords. The tenancy between the tenants and landlords began on March 15, 2021, when the landlords purchased the rental unit from the former landlords. No new written tenancy agreement was signed between the landlords and tenants, when the landlords assumed this tenancy from the former landlords. Monthly rent of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 (collectively "deposits") were paid by the tenants to the former landlord, which was transferred to the landlords when they purchased the rental unit. The landlords returned both deposits, in full, to the tenants, at the end of their tenancy. This tenancy ended on April 30, 2022.

The landlords provided a copy of the 2 Month Notice for this hearing. Both parties agreed that the effective move-out date on the notice is June 1, 2022. Both parties agreed that the reason indicated on the 2 Month Notice was:

- *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).*
- *Please indicate which family member will occupy the unit.*
 - *The landlord or the landlord's spouse.*

The tenant testified regarding the following facts. The landlords did not act in good faith when they issued the 2 Month Notice to the tenants. The landlords were given a 4 Month Notice to end their tenancy, which caused the landlords to be evicted. However, the landlord was not named as a tenant on the property, only landlord MM was. The tenants vacated earlier than the date on the 2 Month Notice. The rental unit was listed for sale by the landlords. The landlords had ulterior motives. The damages were present in the rental unit when the tenancy began. There was no move-in inspection, so there is no financial compensation payable to the landlords. The landlords had to return the tenants' deposits. The items were repaired by the landlords to sell the rental unit. The landlord provided a photo of her holding a hammer, but there are no pictures of the damages. The former landlords are in Hawaii, so there was no time to get a letter from them as evidence. There was an advertisement posted for 2 weeks for sale of the rental unit. The Wi-Fi in the landlord's name is acknowledged by the tenant, but it could have been done for the sale of the rental unit or because the other person was in bad standing with the company. There is no sufficient evidence from the landlords that this was their primary residence. This was not done for 6 months. This is for financial gain of the landlords, and they had a larger ulterior purpose.

The landlords' agent stated the following facts. The landlords are relying on their written submissions, which were served to the tenants within the deadline. The landlords gave a 2 Month Notice to the tenants. The landlords were living at a different property that was being rented from different landlords. On February 28, 2022, the landlords were served with a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, dated February 28, 202, and effective on June 30, 2022 ("4 Month Notice"). The 4 Month Notice was served to demolish the rental unit, so the landlords had to move out. The landlord needed a place to stay. The rental unit was too small, so landlord MM had to find alternate accommodations. The landlord occupied the rental unit in good faith. The landlords were facing the loss of their living accommodations. The landlords fulfilled the purpose on the 2 Month Notice, as the landlord continues to

occupy the rental unit for over 6 months. The tenants did not dispute the 2 Month Notice within the 15 day timeline. The tenants made a premature application for 12 months' rent compensation because they applied before the 6 months was over. The landlords allowed the tenants to move out 1 month earlier without notice. There was no rent collected by the landlords for 1 month of tenancy. In good faith, the landlords paid the deposits back to the tenants. It was the landlord's intent to move back into the rental unit right away. However, there were damages caused by the tenants. Therefore, the landlord occupied the rental unit within a reasonable time, given the repairs that had to be done. The landlord moved into the rental unit on June 7, 2022, which is 1 month and 7 days after the tenants vacated on April 30, 2022. There were hazards to the landlord's health so \$20,000.00 in repairs had to be done after the tenants vacated. The landlords provided an invoice for this cost in exhibit D. In good faith, the landlords did not pursue their claim for damages against the tenants and gave the tenants their full deposits back. The landlord occupied the rental unit for over 6 months as per the *Act*. The landlords provided images in exhibits E, F and G. The Wi-Fi is in the landlord's name and the other bills are in her boyfriend's name, as they live together in the home. The landlords are contesting the tenants' allegations.

The landlords' agent stated the following facts. The sale of the rental unit is not relevant because it was not sold. The landlord occupied the rental unit for 6 consecutive months. Selling after the 6-month period would have been ok and not a breach of the Residential Tenancy Policy Guidelines. The landlords told their realtor that they cannot complete a sale until after the 6-month period was up because the landlords know the law. The landlords' realtor provided a letter in evidence regarding what was said to prospective purchasers regarding the purchase of the rental unit. The rental unit was not sold, so it is not relevant. The tenants never said what the penalty was, as per any sections of the *Act*, or that the landlords did not occupy the rental unit, or that they did not occupy it within a reasonable time. The tenants did not provide any written submissions regarding these facts, only oral evidence. This was not done in bad faith and the tenants were served. The landlords said that they or a close family member would move in as per the 2 Month Notice. Residential Tenancy Policy Guideline 2A states that "occupy" means for a residential purpose, and "good faith" means acting honestly, doing what is intended without defrauding or deceiving or avoiding the sections of the *Act*. At the time that the 2 Month Notice was issued to the tenants, there was no intent from the landlords to sell the rental unit, and after there was an intent to list it, but it was never sold.

The landlord stated the following facts. She is a secondary account holder on the hydro account. The repairs to the rental unit were done in May 2022 and she moved into the rental unit in early June 2022.

The landlords' agent stated the following facts. Both landlords are co-owners on title of the rental unit. The landlord lives at the rental unit with her boyfriend.

The tenant stated the following facts in response. The landlord provided photographs outside the rental unit, not inside the house.

The tenant stated the following facts in response to my questions. The tenants have no proof that the landlord did not move into the rental unit. The tenant knows that someone lives at the rental unit but does not know if it is the landlord. The landlord would have moved into the rental unit in order to accomplish the reason as per the Act. The landlords did not sell the rental unit, but it was listed for sale. The tenants seek 12 months' rent compensation of \$2,100.00 per month, for a total of \$25,200.00. The landlords did not fulfill the reason on the 2 Month Notice, so the tenants are entitled to compensation.

Analysis

Rules and Burden of Proof

At the outset of this hearing, I informed the tenant that, as the applicants, the tenants had the burden of proof, on a balance of probabilities, to present their submissions and evidence, and to prove their monetary claims, in order for me to make a decision regarding their application. The tenant affirmed her understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which they were required to serve to the landlords.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the**

Residential Tenancy Branch website on submitting evidence at
www.gov.bc.ca/landlordtenant/submit

- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present the tenants' application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the tenant failed to properly review and explain the tenants' claims, amounts, documents, and evidence submitted in support of their application. The tenant mentioned submitting documents but did not review them in sufficient detail during this hearing. The tenant did not point me to specific documents, page numbers, provisions, or other detailed information. Conversely, the landlords provided relevant documentary evidence, which was explained by the landlords' agent during this hearing, in sufficient detail with specific references to provisions and exhibits.

The tenants did not provide a copy of the 2 Month Notice for this hearing, only the landlords did. The tenants claimed that they lost the 2 Month Notice, as per their text message evidence submitted. The tenants provided copies of text messages, indicating that they received the 2 Month Notice from the landlords, they got 1-month free rent compensation from the landlords pursuant to the notice, and the landlords were in fact, their landlords. The tenants also provided copies of MLS listings indicating that the rental unit was listed for sale. None of the above facts were disputed by the landlords. I reviewed this evidence prior to writing this decision, as it was not sufficiently reviewed or explained by the tenant during this hearing.

The tenant did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in this application, until I specifically asked her about it during this hearing. Rather than presenting and explaining the tenants' application and evidence, the tenant focussed her verbal submissions on disputing the landlords' evidence, which had not even been presented by the landlords yet.

This hearing lasted 48 minutes, so the tenant had ample time and multiple opportunities to present the tenants' application and respond to the landlords' evidence. I repeatedly asked the tenant if she had any other information or evidence to present, during this hearing.

Findings

The tenant confirmed that the tenants seek 12 months' rent compensation of \$2,100.00 per month, totalling \$25,200.00, because the landlords did not use the rental unit for the purpose stated on the 2 Month Notice. The tenant only confirmed this information when I specifically asked her about it and I provided her with the amounts and sections of the *Act*, as she did not review any of this information during her submissions or presentation of the tenants' application during this hearing.

Section 49(3) of the *Act* states the following:

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to 12 times the monthly rent if the landlords do not use the

premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

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

(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.

It is undisputed that the tenants vacated the rental unit on April 30, 2022, pursuant to the 2 Month Notice, and they received 1-month free rent compensation pursuant to the notice and section 51 of the Act. It is undisputed that the landlords issued the 2 Month Notice to the tenants for the landlords or a close family member to occupy the rental unit after the tenants moved out. It is undisputed that the landlord qualifies as a landlord and owner, who is entitled to occupy the rental unit, pursuant to the 2 Month Notice. These facts were undisputed by both parties during this hearing.

Section 51(3) of the Act states the following:

(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.

I am required to consider the above section 51(3) of the Act, regarding extenuating circumstances, regardless of whether it is raised by any party during this hearing. I informed the tenant of same during this hearing and she affirmed her understanding of same. However, I find that the above section is not relevant to my decision, since I find the landlord occupied the rental unit, as noted below.

I accept the affirmed testimony of the landlord, the affirmed submissions of the landlords' agent, and the landlords' documentary evidence submitted for this hearing. The tenant did not dispute the authenticity of the landlords' documents during this hearing. I find that the landlord began occupying the rental unit on June 7, 2022, and continues to do so as of the date of this hearing on February 13, 2023, which is more than a 6-month time period.

The landlords provided a copy of a 4 Month Notice indicating that landlord MM, was a tenant, and his rented residence was being demolished. While the landlord's name is not indicated on the notice as a tenant, I accept the affirmed submissions of the landlords' agent at this hearing, that the landlords were residing together at a different property, they were tenants of another landlord, they were required to vacate as per the above notice, they had to find a new place to live, the rental unit was too small for both of them, and the decision was made for only the landlord to move in. Regardless of whether the landlord was named as a tenant on the 4 Month Notice or whether she lived at a different property with a different landlord or not, the landlord is entitled to move into the rental unit, if she wants to do so, pursuant to the 2 Month Notice, issued to the tenants.

The landlords provided electricity invoices from a hydro company for usage between May 1 to June 7, 2022. The invoices are in the name of the landlord's boyfriend for service at the rental unit address with the names of the landlord's boyfriend and the landlord as "active users" on June 13, 2022. The landlords provided an internet invoice from a telecommunications company for internet usage between May 9 and July 6, 2022, in the name of the landlord, for service at the rental unit address. I find that the landlords provided sufficient documentary evidence above, that the landlord occupies the rental unit, and uses hydro electricity and internet there. Regardless of whether the hydro electricity invoices are in the name of the landlord's boyfriend, the landlord is still listed as an active user on the account.

I find that the landlord occupied the rental unit within a reasonable period of time after the tenants vacated early on April 30, 2022, prior to the effective date of the 2 Month Notice of June 1, 2022. I find that the landlords had to complete extensive repairs to the rental unit, prior to the landlord occupying the rental unit. I find that the landlords provided documentary evidence of an invoice, dated May 20, 2022, for repairs totalling \$15,316.50, with a breakdown of tasks completed, and addressed to landlord MM at the rental unit address.

I find that the tenants provided insufficient documentary and testimonial evidence to dispute the landlords' evidence or to dispute that the landlord did not occupy the rental unit within a reasonable time after the effective date of the 2 Month Notice. The tenant testified at this hearing that she agreed that someone was living at the rental unit, but she did not know who, and she had no proof that it was not the landlord. The tenant testified at this hearing that she agreed that the rental unit was not sold to anyone, after the tenants vacated. I find that while the landlords listed the rental unit for sale, it was not actually sold, and the landlord continues to occupy the rental unit, as of the date of this hearing.

On a balance of probabilities and for the reasons stated above, I find that the landlords met their burden of proof and used the rental unit for the purpose stated in the 2 Month Notice, pursuant to section 51 of the *Act*. I find that the landlords took steps within a reasonable period after the effective date of the 2 Month Notice, for the landlord to occupy the rental unit, and the landlord occupied the rental unit for more than 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice, and the landlord continues to occupy it, as of the date of this hearing.

On a balance of probabilities and for the reasons stated above, I find that the tenants are not entitled to 12 times the monthly rent of \$2,100.00, totalling \$25,200.00, from the landlords. Accordingly, this claim is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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: February 21, 2023

Residential Tenancy Branch