



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

JK attended for both tenants ("the tenant"). The landlord attended.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Each party confirmed the email address to which the Decision shall be sent.

No request for accommodation was made.

Preliminary Issue – Service

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. I find the landlord was served in compliance with the Act.

The landlord submitted no documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The landlord did not submit any documentary evidence. Nevertheless, the landlord provided testimony with which the tenant disagreed.

Not all asserted facts and arguments referenced in the hearing are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant sought \$30,000.00 in compensation pursuant to section 51 of the Residential Tenancy Act (the “Act”) based on the landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 22, 2021 (the “Notice” or the “Two Month Notice”).

The landlord acknowledged neither he nor his spouse moved into the unit. However, he testified the unit was too small and he decided after the tenant moved out that the unit was unsuitable.

Background

The tenant submitted a copy of the tenancy agreement between the parties.

The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	November 15, 2019
Vacancy Date	Mar 15, 2022
Rent payable on first of month	\$2,500.00
Security deposit	\$1,250.00 (returned less \$400.00)
Pet deposit	\$1,250.00 (returned)

Two Month Notice

The parties agreed the landlord issued a Two Month Notice to the tenant, a copy of which was submitted which was in the RTB form, as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	February 18, 2022
Vacancy	March 15, 2022
Effective Date of Notice	May 1, 2022
Date and Method of Service	T acknowledged service on February 22, 2022
Reasons for Issuance	Occupation by landlord or spouse
Application for Dispute Resolution	June 14, 2022

One month's compensation provided	yes
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Landlord's Testimony

The landlord testified as follows. He acknowledged having been in the unit before the tenant's tenancy started. He intended to move into the unit when he issued the Two Month Notice.

Nevertheless, the landlord testified he discovered after the tenant moved out that the unit was too small for him as he had "too much stuff".

The landlord claimed, "extenuating circumstances".

The landlord testified he tried to contact the tenant to ask him to move back in, but the tenant had already found another place to live.

The landlord testified he advertised the unit for rent in April 2022 after the tenant moved out on March 15, 2022. The unit was rented again on May 1, 2022 for \$3,300.00, increased from the \$2,500.00 paid by the tenant.

Tenant's Evidence

The tenant stated the family was upset and inconvenienced by the Two Month Notice and the requirement to move. They did not dispute the notice. The tenant stated his daughter was going to an elementary school within walking distance and the family wanted to remain in the unit.

The tenant testified they moved into a smaller, more expensive ("big jump in rent"), and less convenient unit.

The tenant expressed the opinion the sole reason for the issuance of the Notice was that the landlord wanted more rent.

The tenant submitted a copy of the landlord's listing of the unit to rent after the tenant moved out, a picture of the new tenants, and confirmation from the listing agent that the unit had been rented.

Analysis

The tenant seeks 12 months rent as compensation as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and 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.

(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 applicable, 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.

There is no issue that the landlord re-rented the unit to a non-family member in April of 2022 and therefore did not follow through with the stated purpose of the Notice. The issue is whether extenuating circumstances prevented the landlord from following through with the stated purpose of the Notice.

The landlord has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice was issued on February 18, 2022, with an effective date of May 1, 2022, meaning the extenuating circumstances which prevented the landlord from following through with the stated purpose of the Notice had to have occurred between February 18, 2022 and within a reasonable period after the tenant moved out March 15, 2022 or soon after May 1, 2022.

The landlord provided no documentary evidence and called no witnesses.

I consider the landlord's credibility.

Credibility

A useful guide regarding credibility, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

The landlord did not provide any documentary supporting evidence or call witnesses to confirm his intention to move into the unit or his lack of knowledge of the unit's size. In contrast, the tenant provided a credible evidence package and testimony.

I find the landlord has not provided credible testimony that is in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances." The landlord acknowledged having been in the unit before the tenant rented. I find the landlord has failed to meet the burden of proof that he was not knowledgeable about the size of the unit and had to change his plans to move in once the tenant vacated.

The landlord acknowledged never moving into the unit. Instead, he advertised the unit for rent and obtained a substantially higher rent.

I find the likely version of events to be the tenant's testimony. That is, the landlord wanted more rent and evicted the tenant to obtain more rental income.

For those reasons, I give greater weight to the tenant's evidence. I give little weight to the landlord's explanation of why he did not move in to the unit.

Landlord's Submissions

As stated above, I find the landlord did not provide credible or believable evidence in attempting to explain why he did not move into the unit.

In the absence of further evidence to support the testimony of the landlord, I find the landlord was aware of the size of the unit and cannot reasonably claim to have learned about the size after the Notice was issued and within a reasonable period of the tenant moving out or the effective date of the Notice. I am therefore not satisfied the landlord has proven extenuating circumstances.

Findings

Given the above, I find section 51(2) of the *Act* applies and the landlord must pay the tenant 12 times the monthly rent being \$30,000.00

As the tenant was successful in the Application, I award reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the tenant is entitled to \$30,100.00 and I issue the tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The tenant is entitled to a Monetary Order of \$30,100.00 and I issue the tenant a Monetary Order in this amount.

This Monetary Order must be served on the landlord. If the landlord does not comply with the Order, it may be filed in the Courts of the Province of BC and enforced as an Order of the 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: February 28, 2023

Residential Tenancy Branch