



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 26, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant and the Purchaser attended the hearing at the appointed date and time. At the start of the hearing, the Purchaser confirmed having received the Notice of Hearing and the Tenant's documentary evidence package. As such I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Purchaser provided some evidence to the Residential Tenancy Branch, however, during the hearing, the Purchaser stated that they did not serve their evidence to the Tenant.

Preliminary Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

Rules of Procedure 3.15 Respondent's evidence provided in single package Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

3.16 Respondent's proof of service at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

As the Purchaser did not serve their evidence to the Tenant, I find that I cannot consider the Purchaser's evidence in this decision, as the Tenant has not had an opportunity to review the evidence to respond to it during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The Tenant stated that her tenancy started on May 1, 2015. The Tenant stated that near the end of her tenancy, she was required to pay rent in the amount of \$1,350.00 to the Landlord on the first day of each month. The Tenant stated that she vacated the rental unit on April 1, 2021 in compliance with the Two Month Notice to End Tenancy for Landlord's Use of the Property.

The Purchaser confirmed that they purchased the rental property on January 12, 2021. The Purchaser confirmed that they instructed the seller to serve the Tenant with the Two Month Notice to End Tenancy on January 27, 2021 as the Purchaser intended to occupy the rental unit with his family and mother in law who was meant to care for the Purchaser's young children.

The parties testified and agreed that the seller served the Tenant with the Two Month Notice dated January 27, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice was;

"All the conditions of the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit"

The Tenant stated that she complied with the Two Month Notice and vacated the rental unit on April 1, 2021. The Tenant stated that she was notified by a neighbour that the Purchaser did not move into the rental unit, rather, the rental unit was re-rented to several students shortly after the Tenant moved out. The Tenant is seeking compensation given the Purchaser did not accomplish the stated purpose of the Two Month Notice.

The Purchaser stated that he and his family did not occupy the rental unit as intended. The Purchaser stated that his mother in law was unable to travel due to Covid-19 restrictions, therefore, the Purchaser did not have childcare as planned. The Purchaser stated that his wife was unable to work full time hours as she had to care for the children on her own, which resulted in a reduction of income. The Purchaser stated that they were unable to afford the mortgage as a result, therefore, decided to rent out the rental unit instead of occupying it.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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.

(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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive,

regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

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). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenant is claiming compensation equivalent to twelve times the amount of rent as the Purchaser did not accomplish the stated purpose of the Two Month Notice.

In this case I accept that the Purchaser instructed the seller to serve the Tenant with the Two Month Notice as the Purchaser intended to occupy the rental unit with his family. I accept that the Tenant complied with the Two Month Notice and vacated the rental unit on April 1, 2021.

During the hearing, the Purchaser confirmed that he and his family did not occupy the rental unit which was the stated purpose of the Two Month Notice. Instead, the Purchaser stated that they were unable to afford to live in the rental unit as his mother in law was unable to travel to care for the Purchaser's children, which resulted in the Purchaser's wife to take time off work to care for their children. The Purchaser stated

that this resulted in a reduction of income, therefore, they had no choice but to re-rent the rental unit to pay for the mortgage.

I accept that the Purchaser did not accomplish the stated purpose of the Two Month Notice. I find that the Purchaser's reasoning for their inability to occupy the rental unit does not constitute an extenuating circumstance. I find through reasonable planning the Purchaser could have confirmed childcare plans prior to serving the Two Month Notice. I find by gaining vacant possession of the rental unit and then re-renting the rental unit to students demonstrates bad faith. I find that financial hardship does not constitute an extenuating circumstance that prevented the Purchaser from accomplishing the stated purpose of the Two Month Notice.

Based on the above I find that the Tenant is entitled to **\$16,200.00** in compensation from the Purchaser, pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$16,300.00.

Conclusion

The Purchaser has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 of the *Act*. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$16,300.00.

The Tenant is provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser 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: February 07, 2023

Residential Tenancy Branch