



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 a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on a *Two Month's Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), as provided under section 51(2) of the Act.

The tenants appeared for the hearing; however, there was no appearance on part of the landlords despite leaving the teleconference call open at least 20 minutes.

Since the landlords did not appear, I explored service of hearing materials upon the landlords. The tenants testified they sent their proceeding package and evidence to each of the landlords, via registered mail, on May 27, 2022. The tenants provided the registered mail tracking numbers and a search of the tracking numbers showed the packages were successfully delivered.

The tenants testified that on January 4, 2023 the tenants served additional evidence to each of the landlords, via registered mail. The tenants provided the registered mail tracking numbers and a search of the tracking numbers showed the packages were successfully delivered.

The tenants also provided images of the registered mail receipts as proof of service.

I also noted that the landlords had uploaded evidence under this file.

In light of the above, I was satisfied the landlords were duly served with notification of this proceeding.

During the hearing, I checked the Residential Tenancy Branch records to see if there was any communication from the landlords seeking a rescheduling or an adjournment for this proceeding. The only communication received from the landlords was a request by their lawyer that the landlord's monetary claim (set for hearing on September 7, 2023) be heard with the tenant's claim. The Information Officer informed the caller that the files could not be crossed since they were already scheduled but that the landlords may make a request at the January 26, 2023 hearing that the Arbitrator bring the landlord's claim forward as the Arbitrator has discretion to do so. Since the landlords did not appear at the hearing to make such a request, I left the landlord's claim as originally scheduled.

The Rules of Procedure provide for what happens if a party does not appear for their hearing, as set out below:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Considering the landlords were duly served with notification of this proceeding but did not appear, or have someone appear on their behalf, to present their evidence or request an adjournment, I proceeded to hear from the tenants without the landlords present. I did not consider the materials uploaded by the landlords, pursuant to Rules 7.3 and 7.4 of the Rules of Procedure.

Issue(s) to be Decided

Are the tenants entitled to compensation payable under section 51(2) of the Act? If so, what is the amount payable by the landlords?

Background and Evidence

The parties entered into a written tenancy agreement for a one year fixed term tenancy that started on April 1, 2020 and expired on April 1, 2021. The tenancy continued on a month to month basis upon expiration of the fixed term. The monthly rent was set at \$3250.00 payable on the first day of every month.

On January 31, 2022 the tenants received a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") with a stated effective date of March 31, 2022. The stated reason for ending the tenancy was, as indicated on the 2 Month Notice, that the rental unit would be occupied by the landlord or landlord's spouse.

The tenants vacated the rental unit on March 31, 2022.

The tenants submitted that after the tenancy ended the landlords did not move into the rental unit. Within two months of the tenancy ending the rental unit was listed for sale and it was sold effective May 11, 2022 according to BC Assessment records.

The tenants seek compensation equivalent to 12 months of rent, plus recovery of the filing fee.

Documentary evidence provided by the tenants included a copy of: the tenancy agreement; the 2 Month Notice; realtor listings for the rental unit; and, a print out from the BC Assessment website showing the property was sold effective May 11, 2022.

Analysis

I accept the unopposed evidence before me that the parties had a tenancy requiring the tenants to pay rent of \$3250.00 per month. I also accept the unopposed evidence before me that the tenancy ended pursuant to a *Two Month Notice to End Tenancy for Landlord's Use of Property* issued under section 49 of the Act and the reason for ending the tenancy, as stated on the 2 Month Notice, was so that the landlord or the landlord's spouse may occupy the rental unit after the tenancy ended.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended under section 49 of the Act. In this case, the tenants are seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced sections 51(2) and (3) of the Act:

(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.

[My emphasis underlined]

I have been presented unopposed evidence that the rental unit was sold within six months of the tenancy ending. As such, I accept that the landlords did not use the rental unit for the stated purpose for at least six months after the tenancy ended and the tenants are entitled to compensation payable under section 51(2) of the Act.

As seen in section 51(3) of the Act, a landlord may be excused from having to pay the compensation the tenant is otherwise entitled to under section 51(2) where the Director, as delegated to an Arbitrator, is of the opinion that "extenuating circumstances" prevented the landlord from using the rental unit for the stated purpose for at least six months.

Residential Tenancy Branch Policy Guideline 50. *Compensation for Ending a Tenancy* provides information and guidelines with respect to extenuating circumstances, which I have reproduced below:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- 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

The landlords did not present me with any evidence that would point to extenuating circumstances preventing them from accomplishing the stated purpose for at least six months. Therefore, I do not excuse the landlords from having to pay the tenants the compensation payable under section 51(2).

I calculate the amount of compensation payable to the tenants under section 51(2) of the Act to be \$39000.00 [\$3250.00 x 12 months].

While the amount calculated amount exceeds the Small Claims limit, Residential Tenancy Policy Guideline 27: *Jurisdiction* provides information and policy statements with respect to claims exceeding the small claims limit, starting on page 3, as reproduced below:

2. Small Claims Limit

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director must not determine disputes involving claims for debts or damages if the monetary

amount claimed exceeds the limit set out in the Small Claims Act. The limit is currently \$35,000.

If a claim for debts or damages exceeds the small claims limit, a person must apply to the BC Supreme Court. The court then determines whether it will hear and determine the dispute or order that the director hear and determine the dispute. This ensures that, where appropriate, more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available.

If an applicant abandons part of a claim to come within the small claims limit, the director has jurisdiction.

Claims for compensation under section 51(1) or (2), or 51.1 of the RTA, or section 44(1) or (2) or 44.1 of the MHPTA are excluded from the amount that determines jurisdiction.

Although not expressly included in section 58(2) of the RTA, the director will also consider claims made under section 51.3 or 51.4 even if they exceed \$35,000. These claims are not claims for debts or damages, but rather the amount claimed is determined by a formula embedded in the statute. The director has no authority to alter this amount, and mitigation is not a consideration. They are not usually complex. See Policy Guideline 50: Compensation for Ending a Tenancy for information about these compensation provisions.

The small claims limit also does not apply to orders that do not seek monetary compensation, such as repair claims. The director may order a landlord to make repairs that cost more than the small claims limit.

[My emphasis bolded and underlined]

In keeping with all of the above, I accept jurisdiction to award the tenants compensation that exceeds the Small Claims limit and I order the landlords to pay the tenants \$39000.00 under section 51(2) of the Act. I further order the landlords to repay the tenants the \$100.00 filing fee they paid for this application pursuant to section 72(1) of the Act. With their copy of this decision, I provide the tenants with a Monetary Order in the total amount of \$39100.00 to serve and enforce upon the landlords.

Conclusion

The tenants were successful in their application and have been provided a Monetary Order in the total amount of \$39100.00 to serve and enforce upon the landlords.

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 01, 2023

Residential Tenancy Branch