



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 19, 2022 (the "Application"). The Tenants 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 A.A. and the Landlord's Agent N.F. attended the hearing on behalf of the Landlord. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

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. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 12, 2012. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$2,502.50 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,100.00 which has since been returned to the Tenants. The Tenancy ended on May 14, 2021 in compliance with a Two Month Notice to End Tenancy for Landlord's Use of the Property.

The parties testified and agreed that the Landlord served the Tenants with the Two Month Notice dated March 24, 2021 with an effective vacancy date of May 31, 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 the Landlord notified him verbally on March 4, 2021 about their intent to list the rental unit for sale. The Tenant stated that he was later notified on March 17, 2021 that the rental unit had sold, sight unseen. The Tenant stated that the listing was never posted on MLS and that the sale seemed suspicious. The Tenant stated that the Landlord offered to sign a mutual agreement to end tenancy. The Tenant stated that he declined, which resulted in the Landlord serving the Two Month Notice. The Tenant stated that they complied with the Two Month Notice and provided the Landlord with their 10 day notice to end tenancy with an effective date of May 14, 2021.

The Tenant stated that he noticed as of July 2021 there was no one residing in the rental unit. The Tenant stated that he conducted a title search of the rental property on July 23, 2021 which showed that the Landlord was still the registered owner of the rental unit. The Tenant provided a copy of the Title Search in support.

The Tenant stated that the Landlord listed the rental unit for sale on November 22, 2021. The Tenant stated that based on the pictures and details provided in the listing, the rental unit had been significantly renovated following the end of the tenancy. The Tenant provided a copy of the listing in support.

As such, the Tenants feel entitled to compensation equivalent to twelve times the amount of rent as the Two Month Notice was served in bad faith. If successful, the Tenants are also seeking the return of the filing fee.

The Landlord's Agent responded by stating that the rental unit sold, however, when the purchaser attended the rental unit on April 6, 2022, they were not satisfied with the condition of the rental unit. The Landlord's Agent stated that the Landlord was faced with the decision to either renegotiate the sale price of the rental unit or face a lawsuit. The Landlord's Agent stated that the Landlord decided to release the purchaser from their obligation to purchase the rental unit and proceeded to renovate the rental unit, before relisting the rental unit for sale a few months later. The Landlord provided an email dated March 9, 2021 from the realtor stating "*the home needs to be extensively renovated / gutted*". The Landlord also provided pictures of the rental unit in support.

The Landlord's Agent stated that the Tenants were already seeking to vacate the rental unit and were provided the full return of their deposit despite the poor condition of the rental unit. The Landlord's Agent stated that the Tenants just see an opportunity to make money from their Application. The Landlord's Agent stated the purchaser was available to call into the hearing if needed. I notified the Landlord's Agent that it would be his responsibility to have the purchaser call into the hearing. The Landlord's Agent stated that they are not available all the time, have businesses to run, and travel.

Analysis

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

According to Section 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.

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)).

The Tenants are claiming compensation equivalent to twelve times the amount of rent as the Landlord did not accomplish the stated purpose of the Two Month Notice.

I accept that the Landlord served the Tenants with a Two Month Notice to End Tenancy indicating that "*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.”

I accept that the Tenants complied with the Two Month Notice and vacated the rental unit early on May 14, 2021. While the Landlord's Agent stated that the rental unit sold, I find that the Landlord provided insufficient evidence to demonstrate that the rental unit was purchased and that all conditions of the sale have been satisfied. Instead, the Landlord's Agent stated that the Landlord allowed the purchaser to back out of the deal, which would further indicate that the conditions of the sale had not been satisfied. I find that the Landlord provided insufficient evidence to demonstrate that there was a purchaser, or that they backed out of the sale.

Instead, I find that the Landlord completed renovations once the Tenants vacated the rental unit and listed the rental unit for sale, which had been the recommendation of the Landlord's Realtor. I find that the Landlord did not act in good faith by serving the Two Month Notice to the Tenants. I find it is more likely that not that the Landlord's true intent was to gain vacant possession of the rental unit in order to conduct renovation in order to list the rental unit for a higher amount and did not fulfill the requirements of Section 49 of the *Act*. The Landlord provided insufficient evidence to demonstrate that an extenuating circumstance prevented them from accomplishing the stated purpose of the Two Month Notice.

Based on the above I find that the Tenants are entitled to **\$30,030.00** in compensation from the Landlords, pursuant to section 51(2) of the *Act*. As the Tenants were 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 Tenants are therefore entitled to a Monetary Order in the amount of \$30,130.00.

Conclusion

The Landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$30,130.00.

The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 6, 2023

Residential Tenancy Branch