



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 5, 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 confirmed that they did not submit any evidence in response to the Tenant's Application.

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 October 1, 2005. The Tenant stated that near the end of her tenancy, he was required to pay rent in the amount of \$750.00 to the Landlord on the first day of each month. The Tenant stated that he vacated the rental unit on May 1, 2022 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 May 3, 2022. The Purchaser confirmed that they instructed the seller to serve the Tenant with the Two Month Notice to End Tenancy as the Purchaser intended to occupy the rental unit on her own.

The parties testified and agreed that the seller served the Tenant with the Two Month Notice with an effective vacancy date of May 1, 2022. 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 he complied with the Two Month Notice and vacated the rental unit on May 1, 2022. The Tenant stated that the Purchaser had also purchased the neighbouring property and that he suspects that the purchaser intends to develop the property rather than occupy it as stated on the Two Month Notice. The Tenant stated that he attended the rental property in June 2022 to serve the purchaser with the Application in person, however, he was met by an occupant who stated that they were renting the rental unit for \$1,500.00 per month, which is double the rent the Tenant had been paying. The Tenant stated that the occupant notified him that the Purchaser had instructed him to say he was the Purchaser's family or a caretaker.

As such, the Tenant feels as though the Two Month Notice was served in bad faith as the Purchaser did not occupy the rental unit as intended, instead, they re-rented the rental unit. The Tenant is seeking compensation equivalent to twelve times the amount of rent as a result.

The Purchaser stated that she moved into the rental unit shortly after the Tenant vacated. The Purchaser stated that she works all over and that she uses the rental unit

only on weekend, sometimes only a couple weekends a month. The Purchaser stated that the person who spoke with the Tenant at the rental unit may have been her father or a worker.

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)).

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.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

The Tenant is claiming compensation in the amount of \$9,000.00 which represents twelve months of rent as the Purchaser re-rented the rental unit rather than occupying it for at least six months after the effective date of the notice.

In this case, I find that the Purchaser has the burden to prove that they accomplished the stated purpose of the Two Month Notice.

I accept that the Tenant complied with the Two Month Notice and vacated the rental unit on May 1, 2022. During the hearing, the Tenant stated that he attended the rental unit in June 2022 and spoke with the new occupant of the rental unit who stated that they were renting the rental unit for \$1,500.00.

The Purchaser denied that she re-rented the rental unit and stated that she stays there on weekends, sometimes two weekends per month. The Purchaser stated that the person who spoke to the Tenant may have been her father or a worker.

I find that the Purchaser has provided insufficient evidence to demonstrate that she occupies the rental unit for a residential purpose. I find that the Purchaser's testimony indicates that she rarely occupies the rental unit, sometime only for a couple weekends per month. The Purchaser submitted no documentary evidence to demonstrate that she accomplished the stated purpose of the Two Month Notice. I further find that the Purchaser did not provide reliable testimony relating to who answered the door at the rental unit to speak with the Tenant during his attendance.

I find it more likely than not that the Purchaser did not accomplish the stated purpose of the Two Month Notice and that it was served in bad faith. I find that the Tenant is entitled to **\$9,000.00** 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 \$9,100.00.

Conclusion

The Purchaser has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two

Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$9,100.00.

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 16, 2023

Residential Tenancy Branch