



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding SINCERE REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$49,200, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (12 months compensation pursuant to section 51(2) of the Act) and to recover the cost of the filing fee.

The tenants, their counsel, AN (tenant's counsel), the landlord/owner, ZYX (landlord), landlord's counsel, SL (landlord's counsel), an agent for the landlord, GW (agent), and a translator for the landlord, WZ (translator) attended the teleconference hearing. All parties, except counsel were affirmed. Counsel was not affirmed as counsel confirmed that they have been called to the BC Bar and as such, have already sworn an oath. The legal assistant was not affirmed as they did not participate and the witness was not called to testify during the hearing, so was also not affirmed.

I have reviewed all relevant oral, documentary, digital evidence and submissions before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

In terms of service of evidence, the only evidence to be excluded was the late evidence submitted by the tenants, which was not served on the landlord within the timelines provided for in the RTB Rules. All other evidence was confirmed to be received and reviewed prior to the hearing by the parties.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

In addition, during the hearing, there was no dispute that the agent, GW, signed the tenancy agreement and the 2 Month Notice on behalf of the landlord owner, ZYX. As a result, I will remove the property management company, Sincere Real Estate Services Ltd. from any resulting monetary order as I find that they were acting on behalf of the landlord and that the landlord is ultimately responsible to pay any compensation owing in this matter.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2019 and converted to a month-to-month tenancy after October 31, 2021. Monthly rent was \$4,100 per month and was due on the first day of each month.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 13, 2021 (2 Month Notice). The reason stated on the 2 Month Notice reads as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

Landlord's counsel admitted that the agent made a "typo" on the 2 Month Notice and that they landlord intended to indicate "the father or mother of the landlord or landlord's spouse" on the 2 Month Notice. Landlord's counsel then presented a letter written in

Chinese to support that the landlord's father, ZGX (ZGX) was admitted to hospital in China on September 23, 2021 and although was discharged on October 5, 2021, was provided medical advice written in the same letter that ZGX should follow-up after one month due to a diagnosis of gall bladder stones and chronic inflammation related to gall bladder stones. The information was relayed by the translator reading the document during the hearing. Landlord's counsel submits that ZGX eventually came to Canada as of February 1, 2022 and that ZGX has been residing in the rental unit since that time.

At this point of the hearing, the parties were advised that the reason listed on the 2 Month Notice cannot just be substituted under the Act, which I will address further below.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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.

[emphasis added]

In addition to the above, section 51(3) of the Act states:

(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.**

[emphasis added]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters **that could not be anticipated or were outside a reasonable owner's control**. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.

- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

[emphasis added]

Firstly, I find that selecting the incorrect person on the 2 Month Notice cannot just be substituted after the fact or corrected without issuing a new 2 Month Notice, which in the matter before me, was not done. I also finding that making an error by selecting the incorrect person was within the agent/landlord's control as I find that reasonable due diligence would have been to confirm the 2 Month Notice was accurate before ending a tenancy. As such, I find that the landlord failed to comply with the reason stated on the 2 Month Notice.

Secondly, I find RTB Policy Guideline 50 takes a reasonable approach and based on the evidence before me, that the agent mistakenly selecting the incorrect person on the 2 Month Notice **does not** meet the definition of extenuating circumstances that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration.

Rather, I find that any communication issues between the agent and landlord are not the fault of the tenant and that the landlord is ultimately liable for any documents served on the tenant by the landlord's agent. As such, I find the landlord has provided insufficient evidence of extenuating circumstances under the Act. Therefore, I find the landlord has failed to meet the burden of proof to prove they complied with the reason stated on the 2 Month Notice and has also failed to prove that they had extenuating circumstances that prevented them from complying with the reason stated on the 2 Month Notice as indicated above.

Consequently, I find the tenants are entitled to **\$49,200** in compensation from the landlord, comprised of 12 times the monthly rent of \$4,100 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I also grant the tenants the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$49,300** comprised of \$49,200, which is 12 times the \$4,100 monthly rent, plus the \$100 filing fee.

Conclusion

The tenants' application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and instead, had their father eventually move into the rental unit, which was not the reason listed on the 2 Month Notice.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$49,300 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

Should the landlord fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2023

Residential Tenancy Branch