



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

1. Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
2. Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing. A representative of the named landlord, acting as property manager for the previous landlord/owner of the rental unit, also attended. This property manager acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package.

Preliminary Issue

The property manager for the previous owner of the rental unit testified that he was only acting as agent for the previous owner and served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use in accordance with the previous owner's instructions. The tenants acknowledged that they named the property management company as they believed they were required to do so.

I determined that the purpose of this hearing was to determine whether the purchaser of the rental unit accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. The former owner's property management company has no relationship with the new owner/landlord and for this reason, I

dismissed the claim against the property management company without leave to reapply at the commencement of the hearing.

Preliminary Issue

The tenants testified that they served the other named party, the purchaser of the rental unit, with a copy of the Notice of Dispute Resolution Proceedings package via registered mail on June 15, 2022. They testified that the package was returned to them as undelivered on July 21, 2022. The package was sent to the address noted on the “Tenant occupied property – Buyer’s notice to seller for vacant possession” document. The tracking number for the mailing is recorded on the cover page of this decision. The Notice of Dispute Resolution Proceedings package is deemed served upon the owner of rental unit, hereinafter referred to as the “landlord” on June 20, 2022, the fifth day after being sent via registered mail in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the landlord pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The tenants named their son, not named on the tenancy agreement as a tenant, on their application for dispute resolution. As the son was not a signatory to the tenancy agreement, I have removed his name on this application and on the cover page of this decision pursuant to section 64(3) of the Act and Rule 4.2 of the rules of procedure.

Issue(s) to be Decided

Are the tenants entitled to compensation from the landlord for a failure to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy or use the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The following testimony and evidence provided by the tenants was not disputed by the landlord who failed to attend this hearing.

The tenants testified that the tenancy began in October of 2012. By the time the tenancy ended, the tenants were paying \$3,519.00 per month in rent. On or about July 16, 2021, the tenants were served with a 2 Month Notice to End Tenancy for Landlord’s Use with an effective date of September 30, 2021. The tenants received one month’s

rent in compensation from their previous landlord and vacated the rental unit by September 30th.

The tenant FW frequented the rental unit to determine whether the landlord ever occupied the rental unit. In the first two months, the landlord did some small renovations such as installing an oven in their old laundry room, but the renovations seemingly stopped after the first two months. The blinds were almost always closed and there were no vehicles parked in the carport or in front of the house.

The house was essentially empty, however the tenant spotted a mattress in their old den and a small tv. Lying on the mattress was a non-Asian man with a moustache and beard who appeared to be a student, under 30 years old. The tenant knocked on the door to introduce himself however this person did not answer it. The tenant testified there is no other furniture in the house and never any lights on. The tenants provided several photos of the interior and exterior of the house to corroborate their submission that the house is uninhabited.

Analysis

Compensation for ending a tenancy is discussed in Residential Tenancy Branch Policy Guideline PG-50. At part C, the guideline states:

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

On the 2 Month Notice to End Tenancy for Landlord's Use, the reason for ending the tenancy states:

All of the conditions for 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 landlord did not attend this hearing to present any evidence or testimony to satisfy me that they ever accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. The landlord has not discharged his onus to establish any reason as to why I should not award the tenants compensation in accordance with section 51.

The tenants provided uncontroverted evidence and undisputed testimony to satisfy me the landlord was not occupying the rental unit. Consequently, I find the landlord has failed to meet the obligation to have the rental unit occupied by the landlord or a close family member for the duration of the 6 months as set out in section 51. For this reason, I find the tenants area entitled to the statutory compensation in the amount of [\$3,519.00 x 12 = \$42,228.00].

As the tenants' application was successful, the tenants are entitled to recover the filing fee of \$100.00 for the cost of this application.

Conclusion

I award the tenants a monetary order in the amount of **\$42,328.00**.

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 14, 2023

Residential Tenancy Branch