



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1328986 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and recovery of the cost of the filing fee.

The tenants and the respondents, DC and KK, attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

There were no issues raised with regard to service of the tenants' application or evidence. The respondent did not file any documentary evidence for this dispute.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) 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

The written tenancy agreement filed in evidence showed a tenancy start date of January 1, 2022 and a monthly rent of \$1,750. The tenant said they lived in the rental unit since February 2021. The tenant said the tenancy ended on April 1, 2022, when they vacated the rental unit. The monthly rent at the end of the tenancy was \$1,750.

The respondent/purchaser (respondent) purchased the property from the original landlord, according to the "TENANT OCCUPIED PROPERTY-BUYERS NOTICE TO SELLER FOR VACANT POSSESSION" (Buyers Notice), which was attached to the 2 Month Notice, all of which was filed in evidence. The Buyers Notice was printed on a BCREA form.

The Notice at issue in this dispute, issued by the tenant's original landlord, was dated February 19, 2022, and listed an effective, move-out date of May 1, 2022.

As a reason for ending the tenancy, the Notice listed the following:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)				
<input type="checkbox"/> 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.				
<input type="radio"/> The landlord or the landlord's spouse <input type="radio"/> The child of the landlord or landlord's spouse <input type="radio"/> The father or mother of the landlord or landlord's spouse				
<input type="checkbox"/> The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.				
<input checked="" type="checkbox"/> 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. -HOUSE DEMOLISHED AS PER DEVELOPER				
<input type="checkbox"/> The tenant no longer qualifies for the subsidized rental unit.				
Purchaser Information: (complete only if issuing this Notice because the purchaser asked for notice to be given)				
first and middle name		last name		
		BC Ltd.		
unit #	street # and name	city	province	postal code
	Road	Richmond	BC	
<input type="radio"/> Copy of contract of purchase attached, or <input checked="" type="checkbox"/> Copy of purchaser's written request for the seller to issue an eviction notice attached				
Complete the details below at the time of service (not required on landlord's copy; failure to complete does not invalidate notice).				
Notice served by:				
<input type="checkbox"/> In person to the tenant or agent of the tenant or with an adult over 19 who apparently lives with the tenant <input type="checkbox"/> Sending a copy by registered mail to the address at which the tenant resides <input type="checkbox"/> Leaving a copy in a mailbox or mail slot at the address where the tenant resides <input checked="" type="checkbox"/> Attaching a copy to the door or other conspicuous place where the tenant resides <input type="checkbox"/> Fax it to a number you have provided as an address for service <input type="checkbox"/> Email to an email address you have provided as an address for service <input type="checkbox"/> As ordered by the Director of the Residential Tenancy Branch (attach copy of Substituted Service Order)				
Landlords should also complete Proof of Service Notice to End Tenancy (form #RTB-34) as evidence of service.				

[Reproduced as written except for redacting personal information to protect privacy]

The Buyers Notice is reproduced in part as follows:

WHEREAS:

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated 27th September, 2021 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- ~~D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the Residential Tenancy Act), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.~~

NOW THEREFORE in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on 4th May, 2022.

For the purpose of giving the Tenant Notice under Section 49 of the *Residential Tenancy Act*, the Buyer(s) address is: Rd Richmond BC and the Buyer(s) hereby consent to the Seller(s) including the Buyer(s) name(s) and such address on the Tenant Notice for the purpose of Section 49(7) of the *Residential Tenancy Act*.

Executed by the Buyer(s) this 2/19/2022 day of .

Witness: <u> </u> Print Name: <u> </u> Witness: <u> </u> Print Name: <u> </u>	Buyer: <u> </u> Print Name: <u> </u> BC Ltd. Buyer: <u> </u> Print Name: <u> </u>
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In their application, the tenants wrote as follows:

Upon a conversation with the RTB- we were made aware that the notice of eviction was not legal due to the reasoning behind the eviction. As well, we were advised that we have a right to up to one years worth of rental compensation due to misuse of property and illegal eviction under the Residential tenancy act.

In response to the tenants' claim, the respondent proceeded first in the hearing.

Respondent DC testified to the following: That they were not the purchaser, but rather, they were the developer and that he was not the owner until May 2, 2022. The offer on the property was made on September 27, 2021, and accepted on October 2, 2021.

DC submitted that the numbered company was related to this project only and they do not know what type contract the seller and tenants had, but asserted they were not the landlord at the time.

DC testified that from Day 1, everyone knew that they were not moving into the property as the property was for demolition and development. Ultimately, the project was scrapped as their project application was cancelled after the elections. DC submitted that they just let the real estate agents talk to each other about the transaction, but to cut their financial losses, they had no choice but to re-rent the property to other tenants.

KK testified that they were helping the corporation to find new tenants.

In response, the tenants filed photographs. The photos show the property being listed for rent, for \$550 more in monthly rent than the tenants were paying.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under Tenancy Policy Guideline 2A, the onus is on the landlord or purchaser to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice given to the tenants was issued by the landlord at the time, who was also the seller. It is clear from the Buyers Notice attached to the 2 Month Notice that the respondent requested the former landlord/seller to issue the tenants a section 49 notice terminating the tenancy by May 4, 2022. Further, on the Buyers Notice, the buyer/respondent consented that their name and address be given to the tenants on the 2 Month Notice. The Buyers Notice is digitally signed, with what I find appears to be DC's signature representing the named respondent here, and KK's signature as a witness.

I find it is also clear from the evidence that the respondent altered the Buyers Notice by marking through the standard paragraph that the reason for vacant possession was so that the buyer or close family member intended in good faith to occupy the property. I find it reasonable to conclude that this compelled the former landlord to partially mark through the reason for the eviction on the 2 Month Notice. **Nonetheless, the purchaser required the seller/former landlord to issue a 2 Month Notice evicting the tenants under section 49 of the Act.**

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]

I find the evidence shows the purchaser/respondent requested the tenants' landlord to give the tenants a Notice under section 49.

The undisputed evidence is that the purchaser/respondent or family member did not move into the rental unit. The evidence is also that the rental unit has not been demolished as the respondent confirmed that the rental unit has been re-rented. In both instances, section 49 addresses the requirement to occupy the rental unit or to demolish the rental unit.

For this reason, I find the respondent must pay the tenants the amount of \$21,000, the equivalent of 12 times the monthly rent of \$1,750.

Section 51(3) of the Act authorizes me to excuse the purchaser from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances

prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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.

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.

In these circumstances, I find the respondent submitted insufficient evidence of extenuating circumstances. The respondent put forward that their project application was cancelled after the election. The respondent provided no documentary proof that this was the case, or any other documentary evidence to excuse them of their obligation.

As I have found the respondent must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,750 and as I have found insufficient evidence of extenuating circumstances preventing the respondent from complying with their 2 Month Notice, I find the tenants have established a monetary claim of \$21,000.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary order of \$21,100, the equivalent of monthly rent of \$1,750 for 12 months, or \$21,000, and the cost of the filing fee of \$100.

Should the respondent fail to pay the tenants this amount without delay, the tenants may serve the order on the respondent for enforcement purposes. The respondent is cautioned that costs of such enforcement are recoverable from the respondent.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$21,000 and recovery of the filing fee is granted. They have been granted a monetary order for \$21,100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 15, 2023

Residential Tenancy Branch