



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1328959 B.C. 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:

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

Both tenants attended the hearing. The landlord was represented by one of the shareholders of the numbered company (the "landlord"). The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and stated he had no concerns with timely service of documents. The landlord did not provide any documentary evidence for this hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Did the landlord have an extenuating circumstance preventing it from accomplishing the stated purpose for ending the tenancy?

Should the tenants' filing fee be recovered?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is the upper unit of a single family house with both an upper and lower unit. The lower unit was occupied by unrelated tenants. At the time the tenancy ended, rent for the unit in question was set at \$1,865.00 per month.

The landlord gave the following testimony. He represents the numbered company as one of the shareholders. The other shareholders are various members of his extended family in what the landlord describes as "many families". The company purchased the rental unit with the rental unit already tenanted. The purchase of the unit completed on January 11, 2022. A new tenancy agreement was signed with the tenants on January 11, 2022, however the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use a couple of days later. The effective date for the notice to end tenancy was March 31, 2022.

A copy of the notice was provided as evidence. The Two Month Notice states that the reason for ending the tenancy is because:

1. The rental unit will be occupied by the Landlord or the Landlord's close family member, specifically the Landlord or the Landlord's spouse;
2. The Landlord is a family corporation and a person with voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit; and
3. All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord (previous owner), in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord acknowledged that neither he nor any close family members ever occupied the rental unit. He acknowledged placing advertisements in social media to obtain tenants to occupy the rental unit and that new tenants moved in on June 1, 2022.

The rental unit is owned by the numbered company and not any individual people. The shareholders of the numbered company have family ties, but the landlord did not elaborate on the nature of the numbered company's structure during testimony.

There is no purchaser who asked this landlord in writing to give a notice to end tenancy and the numbered company he represents continues to own the rental unit. Marking the third reason for ending the tenancy was an error made by his real estate agent.

The landlord testified that the original plan was to purchase a nearby farm and plant crops. The deal did not go through with the farm and the landlord ended up not purchasing it. The landlord testified that his grandmother got sick near the end of April or early May 2022. Ideally, they were going to evict the tenants and live in the rental unit while working the farm but since the grandmother died, the company decided not to go through with the deal to purchase the farm.

As the landlord acknowledged their evidence and acknowledged that they did not occupy the rental unit after the tenancy ended, the tenants did not provide any testimony.

Analysis

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.

The following facts are not disputed. The landlord is not an individual, but a corporation. The rental unit was never occupied by the person representing the corporate landlord or any of his close family members. It was advertised for rent and a new tenant was found for June 1, 2022 which is less than six months from the effective date of the notice (March 31, 2022). The corporate landlord continues to own the rental unit and there is no purchaser who asked the landlord to end the tenancy so the purchaser or the purchaser's close family member could occupy it.

The landlord acknowledged that neither he, nor any of his close family members ever occupied the rental unit after the effective date of the notice to end tenancy.

In order for me to determine whether the tenants are entitled to compensation, I must first determine whether the reasons for ending the tenancy were valid. For the reasons set out below, I find they were not.

1. The landlord is not an individual, but a corporation – a numbered company. By definition, a corporation cannot have a residence so occupying the rental property as a residence cannot be achieved.
2. The landlord referred to himself as a “shareholder” of the numbered company and testified that there are other shareholders who may or may not be directly related to himself. At no time did the person appearing on behalf of the landlord for this hearing ever state that the numbered company is a family corporation. Although there were vague references to “our grandmother”, the familial relationship between the shareholders was never disclosed during testimony and no documentary evidence of the corporate structure was provided. As such, I find I have insufficient evidence to satisfy me the landlord is a family corporation.
3. The landlord has acknowledged that there is no purchaser who asked the landlord to end the tenancy so the purchaser or the purchaser’s family could occupy the rental unit.

As none of the reasons for ending the tenancy are valid, there can be no extenuating circumstances preventing the landlord from accomplishing the said reasons as contemplated under section 51(3). The tenants are entitled to compensation of 12 times the monthly rent. [\$1,865.00 x 12 = \$22,380.00].

As the tenant’s application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenants’ favour in the amount of \$22,480.00.

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: March 06, 2023

Residential Tenancy Branch