



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1160808 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

The tenants attended the hearing; however, no one for the respondent attended. The tenants were affirmed.

The tenants testified they served the respondent with the tenants' application for dispute resolution, evidence, and notice of hearing (application package) by registered mail. The tenants did not file the proof of service and they could not provide the registered mail tracking number at the hearing. Following the hearing, I allowed the tenants to upload their proof of service, which they did. Included in the proof of service was a Canada Post registered mail receipt, showing the tracking number, as well as confirmation of delivery.

The evidence shows the tenants served the respondent by registered mail on June 18, 2022, and that the respondent collected the registered mail on June 22, 2022.

Based on these submissions, I find the respondent was served notice of this hearing and the tenants' application in a manner complying with section 89(1) of the Act.

The tenants were provided the opportunity to present their evidence orally 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, only the

evidence relevant to the issues and findings in this matter are described in this Decision. 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?

Background and Evidence

The tenants submitted that the tenancy began on July 1, 2018 and ended on January 31, 2022. The monthly rent at the end of the tenancy was \$1,595.

The tenants' monetary claim is \$19,140, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, or \$1,595.

The tenants wrote in their application the following:

Voilation of Buyers Notice to Seller for Vacant Possession section D. The Buyer(s) did not intend in good faith on occupying the property.

[Reproduced as written]

The Notice received from the landlord was dated November 21, 2021, listing an effective move-out date of January 31, 2022.

The reason for ending the tenancy states that all the conditions for the sale of the property 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. A copy of the Notice was filed in evidence, which listed the respondent as the purchaser.

The tenants submitted that they noticed yard signs at the residential property shortly after the tenancy ended and filed a real estate listing showing the home for sale. The tenants submitted copies of text messages from their former neighbours which informed the tenants that no one has moved into the rental unit as of May 25, 2022. In an email, a former neighbour observed grass growing to roughly 2 feet tall, a wedding party of 8-10 people stayed at the property in March 2022, a moving truck moved in a few pieces

of furniture and then picked the furniture up a few days later, and there was currently a for sale sign on the property, as of May 25, 2022.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

As the respondent/purchaser failed to attend the hearing, I consider the tenants' application unopposed.

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.

There is no dispute that the respondent requested that the former landlord issue a 2 Month Notice on their behalf.

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.

For this reason, I find the respondent must pay the tenants the amount of \$19,140, the equivalent of 12 times the monthly rent of \$1,595.

In addition, the respondent failed to provide any evidence to support extenuating circumstances under the Act.

As I have found the respondents must pay the tenants compensation of \$19,140, and as I have found insufficient evidence of extenuating circumstances, I find the tenants' application is fully successful.

As a result, I grant the tenants a monetary order (Order) of \$19,140, the equivalent of monthly rent of \$1,595 for 12 months.

Should the respondent fail to pay the tenants this amount without delay, the tenants must serve the Order on the respondent for enforcement purposes by means under section 88 of the Act. The respondent is cautioned that costs of such enforcement are recoverable from the respondent.

Conclusion

The tenants' application is fully successful, and they have been granted a monetary order for \$19,140.

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: March 10, 2023

Residential Tenancy Branch