



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the Applicants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Respondents related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Respondents, their Translator, and the Applicants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Respondents personally served the Two Month Notice on February 5, 2022. The Applicants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Applicants on February 5, 2022 pursuant to Section 88(a) of the Act.

The Applicants testified that they served the Respondents with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on June 18, 2022 by Canada Post registered mail (the "NoDRP package"). The Applicants referred me to the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover

sheet of this decision. I find that the Respondents were deemed served with the NoDRP package five days after mailing them, on June 23, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Respondents did not serve their evidence on the Applicants at all, although they uploaded it on the RTB website. I decline to consider the Respondents' evidence that they have uploaded, but I explained to them that they can give their evidence in the hearing as viva voce evidence is always permitted.

Issues to be Decided

1. Are the Applicants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Applicants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 15, 2021. The fixed term ended on February 14, 2022, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,700.00 payable on the first day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy. The tenancy ended on April 30, 2022. Both deposits were returned to the Applicants.

The reason to end tenancy noted on the Respondents' Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was February 5, 2022.

The Applicants testified that the Respondents did not move into the rental unit at all. Instead, the Respondents put the house up for sale. The Applicants were alerted to this as they were looking to buy their own house, and their real estate person brought the listing for their old rental.

The Applicants stated the information they received from their realtor, showed that the Respondents listed their home on May 17, 2022. The Applicants uploaded this listing in their documentary evidence.

The Respondents testified that when they gave the Two Month Notice to the Applicants, their primary residence was up for sale. They said their plan was to sell their primary residence and move into the rental home. The Respondents stated the rental market was crazy. The female Respondent said she quit her job in December 2021 as she had no reason why their primary residence would not sell. Instead, their primary residence did not sell, and the Respondents were carrying two mortgages. The Respondents decided to put their rental home up for sale. It sold right away and before the six month period.

The female Respondent secured a contract job between May to July 2022. The male Respondent was suffering with stenosis in his back in the winter of 2021. He went to an international city for surgery on his back in October 2022. At present, he is still not working.

The Respondents did not explain any extenuating circumstances that prevented them from accomplishing the stated purpose as noted in the Two Month Notice. The female Respondent said they did not have any other choice.

The Applicants seek 12 times the monthly rent payable under their tenancy agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. RTB Rules of Procedure 6.6 states the onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, in this case, the Respondents must prove that they accomplished the stated purpose for ending the tenancy under Section 49 for at least six months.

Section 51 of the Act is the relevant section of the legislation for this matter. It states:

Tenant's compensation: section 49 notice

- (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 the landlord or purchaser, as applicable, does not establish that*
 - (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
 - (b) *the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*
- (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.*

The tenancy ended on April 30, 2022, therefore I find the six month end date would be October 31, 2022. The onus is on the Respondents to prove that they accomplished the stated 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 six months.

The Respondents attempted to sell their primary residence, but when it did not sell quickly, they put their rental home up for sale. It sold relatively quickly, and before the six month end date. The Respondents did not move into the rental unit at all, so I find they did not accomplish the stated purpose as noted in their Two Month Notice.

The Respondents did not provide any evidence that there existed any extenuating circumstances that prevented the Respondents from accomplishing the stated purpose. I find the Respondents are not excused from paying compensation to the Applicants specified under Section 51(2) of the Act.

I find the Applicants are entitled to compensation in the amount of **\$32,400.00** pursuant to Section 51(2) of the Act.

As the Applicants are successful in their claim, they are entitled to recovery of the **\$100.00** application filing fee.

The Applicant's total monetary award is \$32,500.00, and I grant a Monetary Award to the Applicants.

Conclusion

I grant a Monetary Order to the Applicants in the amount of \$32,500.00. The Respondents must be served with this Order as soon as possible. Should the Respondents fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 15, 2023

Residential Tenancy Branch