



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The tenants are referenced in the singular.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings based on submitted, relevant and admissible evidence are set out below.

The tenant seeks \$20,400.00 in compensation pursuant to section 51 of the Act based on the landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 28, 2022 (the "Notice").

The landlord denied the tenant's claim and said there were extenuating circumstances which prevented his daughter from moving into the unit.

Tenancy Agreement

The tenant submitted a copy of the tenancy agreement. The unit is in a building with two duplexes one of which was occupied by the tenant. The tenant testified they are a family with children and rented the duplex for 7 years.

The parties agreed they had a tenancy as follows:

| INFORMATION | DETAILS |
|--------------------------------|---------------------|
| Type of Tenancy | Month-to-month |
| Beginning Date | December 31, 2015 |
| Vacancy Date | May 30, 2022 |
| Rent payable on first of month | \$1,700.00 |
| Security deposit | \$800.00 (returned) |
| Pet deposit | \$800.00 (returned) |
| One month rent as compensation | Yes |

The landlord purchased the property and as a condition of the sale required the seller to evict the tenant.

Two Month Notice

The tenant submitted a copy of the signed document *Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession* dated March 19, 2022, saying it was a condition of the sale that vacant possession be provided as the landlord, spouse or children, intended in good faith to occupy the unit. The document stated it was a section 49 Notice requiring tenant to vacate by May 31, 2022.

The parties agreed the landlord issued and served a Two Month Notice as follows:

| INFORMATION | DETAILS |
|---|---|
| Type of Notice | Two Month Notice |
| Date of Notice | March 28, 2022 |
| Effective Date of Notice | May 30, 2022 |
| Effective Date of Service | March 28, 2022 (acknowledged) |
| Reasons for Issuance | Rental unit to be occupied by child of the landlord or landlord's spouse. |
| Application for Dispute Resolution filed - date | July 4, 2022 |

The tenant submitted a copy of the Two Month Notice as evidence which is in the standard RTB form. The Notice stated the child of the landlord or landlord's spouse would be occupying the unit.

The Notice stated:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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.

☐ The landlord or the landlord's spouse

☒ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ 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.

The tenant did not dispute the Notice.

Landlord's Testimony

The landlord testified as follows:

1. The extenuating circumstances which prevented the landlord from following through with the stated purpose of the Notice relate to the landlord's daughter who planned to attend university in the city in which the unit is located.
2. The landlord purchased the building in which two duplexes were located with the intention that his daughter would move into the tenant's unit.
3. However, after the Notice was issued, the daughter learned she had a medical condition which eventually led to surgery in June 2023. She recovered at the landlord's home in another province until September 1, 2022.
4. The landlord was uncertain of when they received the diagnosis of his daughter's medical condition and when the scheduling of the surgery took place. The landlord submitted no supporting evidence and called no witnesses.
5. The unit was advertised on an online short term rental site on May26, 2022 *before* the tenant moved out on May 31, 2022.
6. The tenant could have stayed for the month of June 2022. They could have booked the unit on the online short term rental site. However, due to confusion in communication, the rental did not take place.

7. In response to questions, the landlord stated his daughter had moved into the unit on (or about) September 1, 2022. However, the landlord later explained that she is living “in the building” in which the duplex, the unit, is located and may *not* be living in the unit.
8. The landlord explained the daughter is the manager of both units and rents out the rooms of both duplexes to other students.
9. The landlord provided no documentary evidence in support of his claim that his daughter was unable to move in for medical reasons or whether his daughter moved into the unit.
10. The landlord stated:

Our intention was and remains to be to provide a home for our daughter [Name] who is attending University in [city]. The property was offered as a short-term rental to help with the costs of maintaining property for the interim only. In addition, the extenuating circumstances of the scheduled leg surgery prevented our daughter from actually living on the property full time until August [2022], only 2 months following vacancy.

The landlord submitted the following relevant documentary evidence:

1. Screenshots showing the unit was rented on the online short term rental site.
2. Enrolment letter for daughter’s attendance at university in fall of 2022.
3. Copy of Two Month Notice
4. Written submissions.

Tenant's Testimony

The tenant testified as follows:

1. The tenant stated the family was upset and inconvenienced by the Two Month Notice and the requirement to move. The tenant stated his children were going to a nearby school and the family wanted to remain in the unit.
2. They did not dispute the notice.
3. They asked the landlord on April 26, 2022, if they could stay in the unit until their children finished school in June.
4. After some time with no reply from the landlord, the tenant said they were “panicked” and found temporary accommodation so the children could finish school. They then moved to a new permanent place.
5. The landlord did not reply to the tenant’s request to stay in the unit until May 26, 2022, at which time they had made other arrangements.
6. The landlord advertised the unit on an online short term rental site on May 26, 2022 until August 31, 2022.
7. The landlord or daughter never moved into the unit.

The tenant submitted the following relevant documents:

1. Tenancy agreement
2. Two Month Notice
3. Screenshots of unit listed on online short-term rental site.

Analysis

The tenant seeks 12 months rent as compensation as the landlord did not carry out the intention in the Two Month Notice. The landlord requested the application be dismissed because there were extenuating circumstances.

Credibility

I provide my findings with respect to credibility of the parties.

A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

The landlord submitted no documentary evidence to support his claim that his daughter was unable to move into the unit because of an unexpected situation, that is, a medical emergency, or that she moved into the unit on September 1, 2022.

When I asked the landlord if his daughter had moved into the unit on September 1, 2022, the landlord replied affirmatively. The landlord explained the daughter is the manager of both units and rents out the rooms of both.

However, later, the landlord said she *may* be living in the other side of the duplex. In other words, his daughter may not be residing in the tenant's unit and may never have moved into the unit. The landlord was vague, evasive and noncommittal.

The landlord was uncertain of when they received the diagnosis of his daughter's medical condition and when the scheduling of the surgery took place.

I accept the tenant's evidence that the landlord did not share this circumstance of the daughter's situation and he did not respond in a timely manner to their request to stay one more month until the end of the school year. I accept the family was inconvenienced and disrupted as they found temporary accommodations elsewhere so the children could finish school.

As acknowledged by the landlord, he listed the unit for short term rental on May 26, 2022, *before* the tenant even moved out until his daughter moved into the building. The landlord appeared indifferent to the effect the eviction notice had on the tenant.

I have carefully reviewed the evidence. I find the landlord's version of events ***not*** to be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I conclude the landlord's testimony is not reliable or credible. I do not give much weight to the landlord's evidence.

Where the parties' evidence differs, I give greater weight to the tenant's version of events.

Two Month Notice

The Notice was issued pursuant to section 49(3) of the Act which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the Act sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the Act and states (emphasis added):

(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.

There is no dispute that the landlord listed the unit on an online short term rental site on May 26, 2022, before the tenancy ended on May 31, 2022. Therefore, the landlord acknowledged he did not follow through with the stated purpose of the Notice until September 1, 2022, when his daughter “may” have moved into the unit.

The landlord has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The issues are whether extenuating circumstances prevented the landlord 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 Notice was issued on March 28, 2022, with an effective date of May 30, 2022, meaning the extenuating circumstances which prevented the landlord from following through with the stated purpose of the Notice had to have occurred between March 28, 2022, and within a reasonable period after the tenant moved out on May 30, 2022.

The landlord takes the position that his daughter became ill after the Two Month Notice was issued and was unable to move into until September 1, 2022. The

landlord provided no documentary evidence and called no witnesses to support his claim of extenuating circumstances.

Extenuating Circumstances

It is open to the landlord to submit that extenuating circumstances prevented him from moving into the rental unit within a reasonable period after the effective date of the Notice.

RTB Policy Guideline 50 states as follows about extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements.

These are 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.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

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.

Findings

I find the landlord has not met the burden of proof there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose of the Notice. .

I find the landlord's unsupported evidence about his daughter's medical condition does not establish why or when he was prevented from accomplishing the stated purpose of the Notice. The landlord also has not credibly proven that his daughter moved in within a reasonable time or, indeed, at all.

I find the landlord has not established sufficient reasons why the unit was not used by the landlord or his daughter for at least 6 months.

I find it is not unreasonable and unjust for the landlord to pay compensation in these circumstances.

Given the above, I find section 51(2) of the *Act* applies and the landlord must pay the tenant 12 times the monthly rent being \$20,400.00.

Summary

The tenant is entitled to an award of \$20,400.00 and I issue the tenant a Monetary Order in this amount.

Conclusion

The Application is granted.

The tenants are entitled to \$20,400.00 and I issue a Monetary Order in this amount. This Order must be served on the landlord and, if the landlord does not comply with the Order, it may be filed and enforced in the Courts of the Province of British Columbia.

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 26, 2023

Residential Tenancy Branch