



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

1. An Order for compensation from the Landlord 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 Landlords and the Tenants 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.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on July 17, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlords confirmed receipt, deemed served on July 22, 2022; and,
- the Landlords' evidence package served by registered mail on January 29, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenants confirmed receipt, deemed served on February 3, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the Tenants 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 Tenants 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 Tenants uploaded a copy of their tenancy agreement. The Tenants testified that this tenancy began as a fixed term tenancy on May 1, 2020. The fixed term ended on April 30, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and was returned to the Tenants at the end of their tenancy. The tenancy ended on March 12, 2022.

The Landlords are the purchasers of the residential property. They stated the male Landlord's parents moved into the rental unit on April 3, 2022. On April 20, 2022, they received news from home and told the Landlords that they had to urgently leave as there was a family property matter at issue. They did not know when the matter would be resolved. The Landlords wrote in their documentary evidence, "*so make it simpler for us we have rent our house.*"

The Landlords testified that their new tenants' tenancy began as a fixed term tenancy on May 15, 2022. The fixed term is to end on May 14, 2023, then the tenancy will continue on a month-to-month basis. Monthly rent is \$2,950.00 payable on the first day of each month. A security deposit of \$1,475.00 was collected at the start of the tenancy and is still held by the Landlords.

At the relevant period of time, the Landlords were in a tenancy which ended in October 2022, and they said that they were planning on joining their parents in the residential property at that time. The Landlords uploaded a city utility bill dated May 30, 2022, and

two hydro bills that go to May 14, 2022 which they submit show the male Landlord's parents were living in the rental unit. The Landlords wrote that mortgage rates have risen and they submit, *"Nobody can afford vacant property for months because our parents have no idea when they will be back. ... This is our first property we bought after 7- 10 years of hard work. We don't buy and sell properties as many people do and give on rents. It's our exceptional scenario that we have to give it on rent because of our parents and to cover our expenses."*

The Tenants testified to being served with the Section 49 Two Month Notice. A copy of the Two Month Notice was uploaded into the Tenants' documentary evidence. The Two Month Notice stated that 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. The effective date on the Two Month Notice was March 31, 2022.

The Tenants stated on May 28, 2022, they had received a text message from a former neighbour who told them,

I spoke to the renters in your old place, they have been there since the beginning of May. They mentioned that the garage was not included, the new owners are planning on putting a suite in the garage. The new renters were not told that a suite was being put in the garage until they were in the process of signing the lease. They are not happy about it.

The Tenants are seeking 12 month's rent compensation as they submit the Landlords did not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

The Landlords submit that they did everything in good faith.

Analysis

RTB Rules of Procedure 6.6 govern that 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. 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. I find the onus is on the Landlords 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 6 months.

The previous landlord ended the Tenants' tenancy under a Two Month Notice. The stated purpose proffered in the Two Month Notice was that 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.

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

RTB Policy Guideline #50-Compensation for Ending a Tenancy addresses issues for resolving disputes of when a landlord does not fulfill their legal obligations after issuing a Section 49 notice (e.g., the Two Month Notice). Policy Guideline #50 states:

...

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- *accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

...

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 tenancy ended on March 12, 2022. I find the six-month time frame went to September 12, 2022. The Landlords testified that the male Landlord's parents first moved into the rental unit on April 3, 2022. On April 20, 2022, the Landlords stated that their parents told them they needed to leave the country urgently because of a family property issue and that they were not sure when the issue would be resolved. The male Landlord's parents vacated the rental unit on May 6, 2022. The Landlords contracted with new tenants whose tenancy began on May 15, 2022. I find that the Landlords did not prove that they accomplished the stated purpose for ending the tenancy under Section 49 of the Act.

Section 51(3) of the Act can excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for at least 6 months.

Policy Guideline #50 continues:

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

...

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

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.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

The Landlords stated that after their parents left, they could not financially maintain the rent they pay in their own tenancy and the mortgage payments for the residential property. The male Landlord's parents lived in the rental unit for about one month. The Landlords have never resided in the residential property even after the male Landlord's parents left. It appears the Landlords did not budget for the contingency that the male Landlord's parents would leave. Within nine days after the male Landlord's parents left, the Landlords had contracted into a new tenancy agreement. I find the Landlords have not provided any evidence or an explanation that there were extenuating circumstances that prevented the Landlords from accomplishing the stated purpose pursuant to Section 51(3) of the Act.

Based on the totality of the Landlords' evidence, I find the Landlords did not accomplish the stated purpose for ending the tenancy for Landlord's Use on a balance of probabilities and they are not excused from paying compensation to the Tenants specified under Section 51(2) of the Act.

The Tenants are entitled to compensation in the amount of **\$26,400.00** pursuant to Section 51(2) of the Act. As the Tenants are successful in their claim, they are entitled to recovery of the **\$100.00** application filing fee pursuant to Section 72(1) of the Act. The Tenants total Monetary Award is \$26,500.00 (\$26,400.00 + \$100.00).

Conclusion

I grant a Monetary Order to the Tenants in the amount of \$26,500.00. The Landlords must be served with this Order as soon as possible. Should the Landlords 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 21, 2023

Residential Tenancy Branch