Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was reconvened from a hearing on February 2, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- compensation in the amount of $27,000.00 due to the Landlords having ended the tenancy and not complied with the Act or used the rental unit/site for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

One of the Tenants EL, the Purchasers DW and XL, and CCL's spouse RC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. RC confirmed that CCL was abroad and that he was attending as CCL's authorized agent. RC was assisted by his son, MC, who provided submissions during the hearing but no affirmed testimony.

An interim decision dated February 2, 2023 (the "Interim Decision") was issued following the original hearing. This decision should be read together with the Interim Decision.

Service of Dispute Resolution Materials

The parties acknowledged receipt of each other's documents for dispute resolution. I find the parties were served with notice of this hearing and each other's evidence per the Interim Decision and in accordance with section 71(1) of the Act.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51(2) of the Act?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit was a standalone house. The rental property was co-owned by CCL and two other individuals, WLH and PWTH (collectively, the "Vendors"). The Tenants entered into a tenancy agreement with CCL as landlord to lease the rental unit commencing on July 15, 2019.

The Vendors listed the rental property for sale in late 2021. RC, a licensed realtor, acted as the listing agent. According to RC, he posted a feature sheet describing the property as "tenanted" with details about the monthly rent to various real estate websites.

On January 5, 2022, XL, in her capacity as her son DW's agent, submitted an offer by DW to purchase the rental property (the "Offer"). XL and DW are both licensed realtors.

Terms 3 and 5 of the Offer required the Vendors to deliver "vacant possession" of the property subject to "nil" existing tenancies.

According to RC, upon receiving the Offer, he and XL had three phone calls (the "Calls") that included discussions of the following matters:

- XL confirmed that DW was purchasing the rental property for the land. DW intended to demolish the rental unit and construct a new house on the property.
- RC advised XL that since the Offer required vacant possession of the rental property, the Vendors must provide the Tenants with a two month notice to end tenancy for landlord's use. RC asked XL if DW would take possession of the rental unit and occupy it in the interim period between closing and demolition. XL confirmed DW would.

The Purchasers denied there had been discussions with RC about occupying the rental unit or issuing a two month notice to end tenancy. The Purchasers explained that they were aware the rental unit was tenanted during initial discussions with RC, but understood that it would be vacant by completion. According to DW, the Purchasers assumed that there was a mutual agreement to the end the tenancy which had nothing to do with the Purchasers. XL stated that she had asked RC about the tenants and was told not to worry about it. RC denied this.

On January 6, 2022 and after further negotiations, the Vendors and DW entered into a binding, subject-free contract for the purchase and sale of the rental property (the "Contract").

On January 29, 2022, RC served the Tenants with a two month notice to end tenancy for landlord's use of property of the same date, signed by CCL (the "Two Month Notice"). The effective date was April 30, 2022. The stated reason for ending the tenancy was: "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 purchaser named on the Two Month Notice was DW.

The Tenants gave CCL a written 10 day notice to move out early and vacated the rental unit on March 14, 2022. At the time that the tenancy ended, the tenancy was month-to-month and the rent was $2,000.00 per month.

On March 23, 2022, RC texted XL to inquire whether the Purchasers intended to rent out the rental property on a temporary basis. RC texted XL: "Will you plan to rent it out temporarily? I will neighbour ask me" (*sic*). XL responded "No." (the "Text Message").

On March 24, 2022, the Purchasers met with RC at the rental property. According to RC, XL advised that DW intended to rent out the property after closing to help with mortgage payments. According to RC, he informed the Purchasers that such action would be contrary to the Act and the Two Month Notice.

On April 22, 2022, the Vendors and DW executed an addendum to assign the Contract to XL as purchaser. The assignment did not release DW from his obligations under the Contract.

The purchase and sale of the rental property closed on April 29, 2022, and XL took possession on April 30, 2022. XL has been the registered owner of the property since.

According to the Purchasers, the rental unit was used as an Airbnb from May 2022 until August 2022, at which time it was demolished. The Purchasers submitted copies of the demolition application and demolition permit into evidence,

The following arguments were advanced on behalf of CCL by RC and MC, as well as via CCL's written submissions:

- The Purchasers falsely represented to CCL that they intended to occupy the rental unit after completion. CCL provided the Tenants with the Two Month Notice in reliance of the Purchasers' misrepresentations and their requirement that the property be delivered to them upon vacant possession.
- The Purchasers knew that the property was tenanted. By submitting the Offer requiring "vacant possession" with no existing tenancies, the Purchasers required that the tenancy with the Tenants be terminated by providing the Two Month Notice. RC had informed the Purchasers of this during the Calls. The Purchasers are real estate agents and sophisticated businesspersons. The Purchasers

understood that a landlord cannot unilaterally terminate a tenancy without a notice to end tenancy pursuant to the Act.

- The Contract fulfills the requirements of sections 49(5)(a) and (b) of the Act. The Contract, the Calls, and the Text Message fulfill the requirements in section 49(5)(c)(i) of the Act. The absence of "asking" language in the Contract is not fatal to a notice to terminate. According to a decision of the Residential Tenancy Branch (the "RTB") dated June 23, 2022 under number 6181 ("Decision 6181"), the RTB ordered the purchasers, as opposed to the vendors, pay compensation to the tenant. The purchaser had intended either for her son to move into the property or to demolish the property. The RTB found that a plain reading of the terms of the contract "leads to the inexorable conclusion that the [purchaser] asked the landlord to end the tenancy by the date of possession." The facts of the current dispute are similar to those of Decision 6181. The Purchasers represented that they would occupy the rental unit in the interim period between closing and demolishing. The Offer and Contract required the Vendors to provide vacant possession despite the Purchasers' knowledge of the existing tenancy.
- The Contract gave the Vendors no option but to deliver the Two Month Notice to the Tenants. Delivering the property tenanted would have been a breach of the Contract. Therefore, the Two Month Notice was given at the Purchasers' "direction".
- The Contract, the Purchasers' representations during the Calls, and the confirmation via the Text Message were sufficient to discharge the Vendors' responsibility for ensuring that the Two Month Notice meets the requirements of the Act. CCL complied with the Act when providing the Two Month Notice to the Tenants.

RC and MC referred to term 5 of the Contract regarding vacant possession. They suggested that the same term was discussed in Decision 6181.

The Purchasers emphasized that they did not give any notice to the Vendors to end the tenancy and did not expect that the Two Month Notice would be issued to the Tenants. The Purchasers argued that the Vendors knew the Purchasers wanted to demolish the rental unit and build a new house. The Purchasers questioned why the Two Month Notice was issued when there were other options. The Purchasers questioned why the Vendors did not negotiate the Contract subject to the existing tenancy. The Purchasers noted that the Text Message correspondence took place on March 23, 2022, while the Two Month Notice was issued on January 29, 2022. The Purchasers argued that the Text Message was taken out of context, since RC was asking the question for a neighbour.

According to the Tenants, their new rent after moving out of the rental unit was $2,250.00 per month, which the Tenants used as the basis for calculating their claim.

Analysis

1. Are the Tenants entitled to compensation under section 51(2) of the Act?

In this case, the Two Month Notice corresponds to a notice to end tenancy under section 49(5) of the Act. Section 49(5) permits a landlord to end a tenancy in respect of a rental unit if:

> (a) the landlord enters into an agreement in good faith to sell the rental unit,
> (b) all the conditions on which the sale depends have been satisfied, and
> (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
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> > (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
> > (ii) the purchaser 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.

I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content under section 52 of the Act. I find the tenancy ended on March 14, 2023 as a result of the Two Month Notice and in accordance with section 50(1) of the Act.

The Tenants seek compensation under section 51(2) of the Act, which states:

> 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
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> > (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.

For the reasons that follow, I find neither of the Purchasers are liable under section 51(2) of the Act. However, I find CCL is liable to pay compensation to the Tenants under section 51(2) of the Act, and is not excused by any extenuating circumstances under section 51(3) of the Act. I will discuss each of these items in turn.

Liability of the Purchasers

Section 49(1) defines a "purchaser" for the purposes of section 49(5) to be a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit. I find the Purchasers each qualify as a purchaser under this definition.

The "purchaser who asked the landlord to give the notice" in section 51(2) of the Act refers to the purchaser described in section 49(5)(c) of the Act. In other words, the purchaser who is liable under section 51(2) is the purchaser who had asked the landlord, in writing, to end the tenancy on one of the grounds described in sections 49(5)(c)(i) or (ii), depending on whether the purchaser is an individual or a family corporation.

Based on the evidence presented, I find that neither of the Purchasers had asked the Vendors in writing to end the tenancy.

I have reviewed the Contract and find it to be in the standard form of residential contract of purchase and sale provided by the British Columbia Real Estate Association and Canadian Bar Association. Term 5 of the Contract states:

> 5. **POSSESSION**: The Buyer will have vacant possession of the Property at 11 o'clock a.m. on April 30 yr. 2022 (Possession Date) or, subject to the following existing tenancies, if any: _____

I find that based on a plain reading, this term alone cannot be construed as a written request to end the tenancy under section 49(5)(c)(i) of the Act. I find this term does not refer to the tenancy or the grounds for ending the tenancy at all. I find this term is a standard term that would have been used even if the property was not subject to any existing tenancy. I find the parties did not point to any term in the Contract which might have mentioned the Tenants or the tenancy.

I note CCL's argument that Decision 6181 dealt with a similar contractual term. I find CCL did not submit a copy of Decision 6181 into evidence and did not quote the contractual term considered in that decision. I find there is insufficient evidence to conclude that the term considered in Decision 6181 was identical to term 5 of the Contract. In any event, I note that Decision 6181 is not binding on me. Pursuant to section 64(2) of the Act, the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions.

I find the Purchasers were aware that the rental unit was tenanted at the time the Contract was entered into. However, I do not accept CCL's argument that knowledge of the existing tenancy, together with a requirement for vacant possession in the Contract, amounts to the Purchasers asking the Vendors to terminate the tenancy by issuing the

Two Month Notice. I find the implication is only that the existing tenancy would be ended by the possession date. I find the Contract does not contain any stipulations as to how or for what reason the tenancy would be ended. For reference, section 44(1) of the Act describes the ways in which a tenancy ends, which include situations other than a landlord issuing a two month notice, such as the tenant giving notice to end the tenancy or the landlord and the tenant mutually agreeing to end the tenancy. I do not agree that the Purchasers being aware of the tenancy and requiring vacant possession leads to the conclusion that the Two Month Notice was issued at the Purchasers' direction.

Furthermore, I find there is insufficient evidence to prove on a balance of probabilities that the Purchasers had verbally represented they would be occupying the rental unit and were informed that the Two Month Notice would be issued. I find the parties disagree as to what was discussed during the Calls. I find the Text Message to be too short and the context unclear to be helpful evidence in this regard. In addition, I find RC and the Vendors were aware that the Purchasers' intention was to demolish the rental unit. I find that even if there had been verbal discussions or representations made by the Purchasers about occupying the rental unit in the interim, these would not be sufficient under section 49(5)(c)(i) of the Act, which clearly requires that a purchaser ask the landlord in writing to give the notice to end tenancy for that purpose.

Based on the foregoing, I am unable to find that the Purchasers had asked the Vendors in writing to issue the Two Month Notice or to end the tenancy for occupation of the rental unit by the Purchasers or a close family member.

I conclude that the Purchasers are not liable under section 51(2) of the Act. The Tenants' claims as against the Purchasers are dismissed without leave to re-apply.

Liability of CCL

Based on the definition of "landlord" in section 1 of the Act, I find CCL is a landlord for the purpose of section 51(2) of the Act, being at the time an owner of the rental property, the person who entered into the tenancy agreement with the Tenants, and the person who signed the Two Month Notice.

I do not find CCL to have discharged her responsibility to ensure that the Two Month Notice complied with the Act, in particular with section 49(5)(c). I find that by issuing the Two Month Notice without a written request from either of the Purchasers, CCL is liable to demonstrate that the stated purpose of the Two Month Notice was accomplished, and if not, to pay compensation of twelve months' rent to the Tenants under section 51(2), unless extenuating circumstances apply under section 51(3). I note that for me to conclude otherwise would result in a loophole where both a vendor-landlord and a purchaser could avoid liability under section 51(2) of the Act by having the vendor-landlord issue a notice to end tenancy under section 49(5) without receiving a written request from the purchaser.

In this case, I find it is undisputed that the rental unit was demolished in August 2022, approximately four months after April 30, 2022, the effective date of the Two Month Notice. Therefore, I find the rental unit was not used for the stated purpose of the Two Month Notice, that is, for occupation by DW or a close family member of DW, starting within a reasonable period after April 30, 2022 and for at least six months' duration.

Accordingly, I find CCL is liable to pay compensation to the Tenants unless excused by extenuating circumstances under section 51(3) of the Act.

Extenuating Circumstances

Section 51(3) of the Act allows the landlord or the purchaser to be excused from paying compensation to the tenant if there were "extenuating circumstances" that "prevented" the landlord or purchaser from accomplishing the stated purpose for ending the tenancy, as follows:

> 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
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> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
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> (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.

According to Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50"), extenuating circumstances 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 include:

- 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.

Policy Guideline 50 also provides some examples which 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.

Based on the evidence presented, I am not satisfied that there were extenuating circumstances which would excuse CCL from paying compensation to the Tenants.

I accept that what the Purchasers did with the property after closing was outside of CCL’s control. However, I do not find it was reasonable for CCL to issue the Two Month Notice without a written request from the Purchasers. I find CCL could have easily met her obligation to issue a proper notice by determining the requirements under section 49(5)(c) of the Act. I find that if CCL had done so, she could have insisted on receiving a written request from the Purchasers before giving the Two Month Notice. I find the Vendors could have negotiated a term in the Contract to address this issue.

Furthermore, I find CCL did not have to enter into the Contract with a term requiring the Vendors to deliver vacant possession. I find it was open to the Vendors to negotiate the Contract subject to the existing tenancy and leave it up to the Purchasers to end the tenancy. After closing, if XL wished to do so, she could then provide the Tenants with a two month notice to end tenancy for landlord’s use of property, or a four month notice to end tenancy for demolition of the rental unit.

I find that the above matters of negotiating the Contract and issuing the Two Month Notice were within CCL’s control. I find CCL did not act reasonably in issuing the Two Month Notice and did not ensure compliance with the Act when negotiating the Contract. I do not find a contractual obligation to deliver vacant possession, which CCL had a role in deciding, constitutes extenuating circumstances sufficient to deny the Tenants compensation.

I conclude that pursuant to section 51(2) of the Act, the Tenants are entitled to compensation of 12 months’ rent from CCL, in the amount of $2,000.00 × 12 months = $24,000.00. I note the amount of this compensation is calculated based on rent paid by the Tenants during their tenancy with CCL and not based on the Tenants’ new rent of $2,250.00 per month.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful in this application against CCL. I grant the Tenants' claim for reimbursement of the $100.00 filing fee from CCL under section 72(1) of the Act.

The total Monetary Order granted to the Tenants in this decision is as follows:

Item	**Amount**
Section 51(2) Compensation ($2,000.00 × 12 months)	$24,000.00
Filing Fee	$100.00
Total Monetary Order for Tenants against CCL	**$24,100.00**

Conclusion

The Tenants' claims for compensation and reimbursement of their filing fee are successful as against CCL. The Tenants' claims in this application as against the Purchasers are dismissed without leave to re-apply.

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **$24,100.00**. This Order may be served on CCL, filed in the Small Claims Division of the Provincial Court, 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 *Residential Tenancy Act*.

Dated: April 13, 2023

Residential Tenancy Branch