



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNETC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 24, 2023, and May 15, 2023. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 and section 51

Both parties attended the hearing and provided affirmed testimony. Two parties, M.N. and J.N., were present for the Landlord. The Tenants were represented at the hearing by legal counsel (referred to as the Tenants). The Landlords confirmed receipt of the Tenants' Notice of Dispute Resolution Proceeding and evidence package, and the Tenants confirmed receipt of the Landlords' evidence package. No service issues were raised.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants named both M.N. and J.N. as respondents/Landlords. However, I note that M.N. was the owner of the rental unit during the material time, and J.N. was only the agent for the owner. Since it is the owner who is liable for following through with the

grounds selected on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice), pursuant to section 51 of the Act, and for paying any potential compensation, I hereby amend, pursuant to section 64(3)(c) the Tenants' application to remove J.N. as a respondent.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 or 67 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,315.00 per month. The Tenants stated they received the Notice on January 30, 2022. The Tenants provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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).
 - The father or mother of the Landlord or Landlord's spouse

The Tenants are seeking 3 items, as follows:

- 1) \$15,780.00 – 12 month's compensation pursuant to section 51 of the Act

The Tenants explained that they were forced into an awkward position of being in the middle of the Landlord, M.N.'s, divorce proceedings since she was ordered to sell the property and failed to adequately safeguard the tenancy from the contentious family law proceedings. More specifically, the Tenants explained that they signed the tenancy agreement with J.N. who is an agent and brother of M.N. J.N. was managing the property for M.N. since she was living in Alberta for most of the tenancy.

The Tenants pointed out that on January 30, 2022, J.N. served them with the Notice on behalf of the owner. The effective date of the Notice was April 1, 2022. The Tenants stated that J.N. explained to them that the Landlord's father had passed away, and that she wanted her mother to move into the rental unit, which is why the Notice was issued. The Tenants stated that when they received the Notice, they had no idea that the Landlord was a party to a longstanding family law proceeding in Alberta with her ex-husband, M.C. The Tenants stated that the disposition of the rental unit was one of the matters in that proceeding.

The Tenants stated that they became aware that there was a family law proceeding involving their rental unit in mid-February when the Landlord's ex-husband, M.C., provided some court documentation to them showing that the Landlord was in contempt of a court order to sell the property. Following that, the Tenants stated that they were caught in between the Landlord and M.C. for the remaining 1.5 months of their tenancy, until they moved out (towards the end of March 2022).

The Tenants provided a copy of the Alberta Court Order from February 15, 2022, showing that the Landlord was ordered on November 18, 2021, to list and sell the rental unit but since she did not, the Court subsequently found the Landlord was in contempt of court on February 15, 2022. The Tenants point out that the Landlord ought to have been aware of the fact that she was required to sell the property before issuing the Notice, and since the Landlord issued the Notice anyways, she did it in bad faith, since she was required to sell the property all along. The Tenants assert that since the Landlord did not comply with the sale order by the Courts, the Tenants were thrust into an unnecessarily contentious battle over the rental unit.

The Tenants stated that the property was ultimately sold (contract of purchase and sale provided into evidence) on March 16, 2022, and the sale eventually completed on or around June 2, 2022, after the necessary documents had been registered with the BC Courts. The Tenants pointed out that, as per the Landlord's evidence, she attempted to stay the proceedings, in an attempt to prevent the sale of the unit by M.C. The Tenants assert that, since the rental unit was sold, that the Landlord failed to fulfill the obligations of the Notice (that her mother was going to move in).

The Landlord asserts that she moved into the rental unit for about 2 months, from April 1, 2022, until end of May or early June 2022, which is when the sale completed and the new owner took possession. The Landlord stated that she issued the Notice because she wanted her mother to move into the rental unit.

The Landlord stated that she was under a previous legal order to list the rental unit for sale, and she states that she was required to list the property by November 8, 2021. The Landlord did not provide any corroborating documentation showing what kind of order or demand this was, but she suggested it was a court order to list the property for sale by November 8, 2021. The Landlord stated that she listed the property for sale on November 8, 2021. The Landlord also noted that on November 4, 2021, her lawyer quit, and so she was unaware of the November 18, 2021, Alberta Court proceeding and Order to sell, although the Landlord indicated that she already was already informed

she had to list the property for sale by November 8, 2021. The Landlord stated that she did list the property for sale by November 8, 2021, and kept the listing active until the property sold by way of the court ordered sale via her ex-husband, M.C.

The Landlord confirmed that her mother never moved into the property but generally referred to her “extenuating circumstances”. The Landlord also stated that her mother was admitted into hospital under the mental health act on or around May 5, 2022, due to the stress in her life. The Landlord also asserts that most of the disruptions were due to her ex-husband trying to sell the rental unit with his realtor, and it wasn’t directly her fault.

The Tenants point out that even if the Landlord was unaware of the November 18, 2021, sale order from her family law proceeding in the Alberta Courts, she directly admits to being under a previous order before that to sell the property, which means there is no way she issued the Notice in good faith so that her mother could move in.

- 2) \$1,972.50 – 100% rent reduction for loss of quiet enjoyment for 1.5 months
- 3) \$1,972.50 – Aggravated damages

The Tenants are seeking 100% rent reduction from February 16, 2022, until the end of March for loss of quiet enjoyment. The Tenants pointed out that it was on February 16, 2022, when they started to receive constant communication and interference with their enjoyment of the rental unit, due to an ongoing and litigious family law dispute which they were forced into between the Landlord and her ex-husband. The Tenants pointed out that the Landlord hired an agent, KJ, who, in conjunction with the Landlord’s ex-husband’s real estate agent, both harassed the Tenants as follows:

- (a) numerous threats of danger or police and court involvement;*
- (b) numerous phone calls or voicemails from various individuals;*
- (c) posting threatening and inflammatory posters on their door;*
- (d) sudden demands to accommodate showings of the unit without proper notice;*
- and*
- (e) having the police called on the Tenants in the middle of the night with no lawful basis.*

The Tenants also stated that this was grossly complicated by the number of people involved in the sale of this home and the fact that the Landlord’s refusal to comply with court orders to sell the property herself, which is why her ex-husband, MC, was eventually granted permission to sell the property by the Courts and hire his own realtor.

The Tenants feel that the Landlord had a responsibility to protect the Tenants from the fallout of this family law dispute between her and her ex-husband, MC.

The Tenants are also seeking the same amount, \$1,972.50 for aggravated damages due to the active harassment and emotional distress they suffered (lost sleep, panic attacks, fear for safety and security of property, loss of appetite, inability to focus at work and study for important professional exams).

The Tenants stated that they were largely unaware of the ongoing family law dispute until February 16, 2022, when they received a call from a stranger, who identified themselves as the Landlord's agent and power of attorney, KJ. At that time, KJ informed the Tenants that some "dangerous men" had a "fake court order" to access the rental unit and that to protect the Tenants, they would be posting a no-trespass notice on the Tenant's door. The Tenants stated that they reached out to the Landlord's other agent, JN, to confirm if KJ was telling the truth, and he replied "yes", as per the text messages provided.

The Tenants stated that this situation made them extremely afraid due to an apparent threat of danger. The Tenants provided a photo of what was posted to their door by the Landlord's agent, KJ, which shows 3 inflammatory and intimidating posters (trespass notices) to keep MC and his realtor from accessing and showing the unit to prospective purchasers. The Tenants stated that they contacted the Landlord's agent, JN, and asked for the notices to be taken down from their front door. However, JN told the Tenants to speak to KJ (the Landlord's other agent and Power of Attorney(POA)), who was the one who posted them.

The Tenants stated that after doing a google search of the Landlord's agent, KJ, they noted that he had been charged and convicted in the past with various offences, including criminal harassment. As such, the Tenants stated that they did not want to speak to KJ any further. The Tenants also stated that KJ forwarded them numerous private documents concerning the Landlord's divorce proceedings which was more than they wanted to know, and forced them into the middle of this.

Following this, the Tenants were contacted by real estate agents on behalf of the Landlord's ex-husband because he was seeking to sell the property pursuant to the Contempt Order. These real estate agents informed the Tenants on March 14, 2022, that they would be performing showings that same week and that they were prepared to change the locks on the Tenants. The Tenants stated they were shocked, since they were preparing to move out anyways by the end of the month. The Tenants stated that

the real estate agents became hostile and threatened to have the courts and the sheriff involved if the Tenants refused showings.

The Tenants further stated that the Landlord's agent and POA, KJ, again called the Tenants and left a voicemail saying that the Landlord's ex-husband and his realtors were falsely trying to gain access to the rental unit. The Tenants stated that KJ threatened them by saying he would call the police on them if they allowed the realtors into the rental unit. The Tenants provided call logs and text messages to corroborate.

The Tenants told the Landlord that they would not allow any more showings, given the increasing hostility. The Tenants stated that they moved out around March 20, 2022, to avoid further harassment and conflict. The Tenants pointed to several post it notes on their door for showings the following day (inadequate notice).

The Landlord asserts that most of the harassment or intimidation came from her ex-husband's realtor, who was aggressively trying to sell the rental unit. The Landlord also asserts that it was KJ who was responsible for some of the other harassment and intimidation. The Landlord opined that she, and JN, were actually trying to mitigate the impact on the Tenants by having cordial conversations. The Landlord provided recordings of conversations with the Tenants to show all the steps they took to try and make it safer for the Tenants at the end of the tenancy. The Landlord pointed to conversations they had with the Tenants about adding additional locks on the door, and scheduling a move-out inspection.

The Landlord also pointed out that they tried to work with the Tenants while all of this was going on to help wind down the tenancy, and do the move-out inspection. The Landlord stated that the Tenants had several positive communications with her agent, JN, towards the end of the tenancy.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

*ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S
USE OR FOR RENVOATIONS 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).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

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). 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.

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

As noted above, the onus is on the Landlord to demonstrate that she accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that she has an extenuating circumstance. The Landlord selected the following ground:

- 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).
 - The father or mother of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

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.*

(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 the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

In this case, I note the onus is on the Landlord to prove that she accomplished the stated purpose on the Notice, which is that her mother or father would be moving into the property. As the Landlord's father had passed away, this leaves her mother as the only person who can satisfy the Notice requirements. I note the effective date of the Notice was April 1, 2022. The Landlord asserts that she moved into the property for a couple of months, before the court ordered sale took effect. However, I also note the rental unit was sold and the sale completed on or around June 2, 2022. This means the rental unit sold a mere 2 months after the effective date of the Notice.

As a result, I find it more likely than not that the Landlord breached section 51 of the Act and her mother failed to move in for at least 6 months, which typically entitles the Tenants to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I note the Landlord, by her own admission, was in the midst of a multi-year divorce proceeding with her ex-husband, MC. The subject rental unit was noted to be one of the shared assets that was part of the divorce proceeding, and which was subject of a sale order by the courts. Although the Landlord claims she was unaware of the most recent court order (and contempt order) to sell her property (from November 18, 2021) because her lawyer quit, leaving her in the dark, I note the Landlord specifically stated in the hearing she was actively trying to sell the rental unit as of November 8, 2021 and that she listed it for sale.

When viewing these facts in totality, it leads me to question why the Landlord would issue the 2 Month Notice for her mother to move in, when alongside of this, she was actively trying to sell the property starting in early November 2021. Regardless of whether she knew of the order made by the court in November 2021 to sell (due to her lawyer quitting) the Landlord was already actively trying to sell the property. Although it was the Landlord's ex-husband who ended up selling the rental unit by way of his realtor and a court ordered sale, it appears both the Landlord and her ex-husband were attempting to sell the unit, as they both had a financial interest in the property. I find this is not an extenuating circumstance, as the Landlord should not have issued the 2 Month Notice in the first place, so that her mother could move in, if she was also trying to sell the unit. I also note the Landlord, by her own admission, was in a protracted multi-year

divorce proceeding with her ex-husband, and seems more likely than not that she was aware the rental unit could be a subject of that proceeding, prior to issuing the Notice.

Further, I note the Landlord stated her mother was admitted into hospital on May 5, 2022, under the mental health act. However, I note the Landlord failed to provide any admissible documentary evidence supporting this. Overall, I am not satisfied that the Landlord has sufficiently demonstrated that any of the reasons she presented are extenuating circumstances, such that it would be unreasonable or unjust for her to pay the compensation. I find the Landlord's own actions substantially contributed to the complexity of her situation by issuing the Notice for her mother to move in, alongside listing the unit for sale, while also in the middle of a divorce proceeding.

I award the Tenant \$15,780.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,315.00.

For the remainder of the Tenant's application, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

The Tenant is seeking \$1,972.50 – 100% rent reduction for loss of quiet enjoyment for 1.5 months.

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

I have considered the totality of the evidence and testimony. I note the Landlord and her ex-husband were in the midst of a complicated and litigious divorce proceeding at the material time, towards the end of the tenancy. I note the tenancy was set to end by way of the 2 Month Notice, effective April 1, 2022. However, the Tenants opted to vacate suddenly, given the escalating conflict and legal disputes regarding the rental unit between the Landlord and her ex-husband. I note the Landlord opined that she, and her agent, JN, took steps to try to make the end of the tenancy smooth and easy for the Tenants, and to mitigate some of the stress. However, I also note one of the Landlord's agents, KJ, was aggressively pursuing and helping enforce what he believed were the Landlord's legal rights with respect to the property, and its pending sale. I find the Landlord is liable for KJ's actions, as he was acting as her agent, and appears to have significantly contributed to the escalation in stress for the Tenants. I accept that this would have been an incredibly stressful period of time for the Tenants, who were already being faced with having to find a new place to live. Then, on top of that, they were also asked to prevent access to other parties in the divorce proceeding, and were heavily stressed out about what they were supposed to do, particularly when one party asked for access, and another was saying to refuse (KJ asked for the Tenants not to allow realtor access).

In any event, I accept that the last 1.5 months, since mid-February, the Tenants would have lost a large part of their quiet enjoyment of the unit and that the interactions they had with all parties involved would have been stressful and would have substantially interfered with their ordinary enjoyment of the rental unit. I find this would likely have significantly decreased the value of the tenancy, and the Tenants' ability to live, free from unreasonable disturbance. It is not fair for the Tenants to be thrust into the middle of a litigious divorce proceeding. That being said, I am not satisfied the Tenant's lost 100% of the value of their tenancy. I find a more reasonable amount is 50%. I find the Tenants are entitled to 50% of this part of their claim for loss of quiet enjoyment. I award \$986.25 for this item.

Next, I turn to the following item: \$1,972.50 – Aggravated damages

I note that in addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical

inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

The Tenant seeks aggravated damages for the stress and anxiety caused by the Landlord, her divorce proceeding, and the impact all of these competing parties had on their life. I accept that this would have been a stressful period of time for the Tenants. It appears the Tenants suffered some collateral damage, particularly at the end of the tenancy, as a result of a litigious and messy divorce proceeding, the involvement of several different agents, and some related court orders. However, I am not satisfied the Landlord acted in a sufficiently highhanded manner, such that aggravated damages are warranted. I decline to award this amount.

Pursuant to section 72, I also award the \$100.00 filing fee. In summary, I find the Tenants are entitled to a monetary order in the amount of \$16,866.25.

Conclusion

I grant the Tenant a monetary order in the amount of \$16,866.25. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: June 2, 2023

Residential Tenancy Branch