



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This matter was adjourned to written submissions following a hearing on May 11, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$42,000.00 due to the Respondent having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to sections 49 and 51; and
- authorization to recover the filing fee from the Respondent (the "Purchaser") pursuant to section 72.

By an interim decision dated May 11, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of May 17, 2023. This decision should be read together with the Interim Decision.

Preliminary Matter – Service of Dispute Resolution Materials

The parties indicated that they did not reach a settlement following the hearing on May 11, 2023. The parties submitted further documentary evidence and written submissions as per the Interim Decision. I find the parties were sufficiently served with each other's evidence and submissions pursuant to section 71(1) of the Act. In making this decision, I have considered all of the parties' evidence and submissions.

Issues to be Decided

1. Are the Tenants entitled to compensation of 12 months' rent?
2. Are the Tenants entitled to reimbursement of 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.

This tenancy commenced with the previous owners of the rental unit in February 2019 and ended on May 31, 2021. At the time that the tenancy ended, rent was \$3,500.00 per month.

The tenancy had ended pursuant to a two month notice to end tenancy for landlord's use of property dated March 4, 2021 (the "Two Month Notice"). This notice is signed by one of the previous owners, AD, and had an effective date of May 31, 2021. Only the first page of this notice is submitted into evidence. The Tenants were unable to locate the remainder of the pages.

Included with the Two Month Notice is a buyer's notice to seller for vacant possession signed by the Purchaser dated March 4, 2021 (the "Buyer's Notice"). According to this notice, the "Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s), or in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s) intend in good faith to occupy the [rental unit]". This notice includes an address for the Purchaser for the purpose of section 49 of the Act, and confirms that the Tenants were to vacate the rental unit by 1:00 pm on May 31, 2021.

The Tenants also submitted a signed cover letter from AS dated March 4, 2021, enclosing the Two Month Notice and the Buyer's Notice. The Tenants stated that they received the cover letter, the Two Month Notice, and the Buyer's Notice in person from AS and AS's realtor on March 4, 2021.

The Purchaser took possession of the rental unit on June 1, 2021.

According to the Tenants, they moved to a new residence not far from the rental unit. The Tenants submitted that they saw people living in the rental unit who were not the Purchaser or her family. The Tenants explained that they recognized the Purchaser and her family from a house showing.

The Purchaser gave the following testimony and evidence:

- The Purchaser was a new immigrant to the country in 2021. The Purchaser did not mind having tenants, but later determined that she needed to self-occupy the property for immigration or mortgage reasons. During the course of purchasing the rental unit, the Purchaser requested the previous owners to provide vacant possession, and they agreed that the Purchaser would pay an additional \$10,000.00 for the Tenants to move out.
- The original plan had been for the Purchaser, her spouse, and their children to all move into the rental unit. Following a big argument between the Purchaser and her spouse in March 2021, they decided to separate. The Purchaser's spouse and their children remained in their previous home. The Purchaser's spouse did not want to move into the rental unit anymore because this property will be in the Purchaser's sole name.
- On March 10, 2021, the Purchaser returned to her home country to care for her grandmother, who was ill. The Purchaser's original plan was to return to British Columbia to complete the land title transfer in June 2021. However, as a result of covid-19 lockdown restrictions in her home country, the Purchaser was unable to return to Canada. The Purchaser was unable to purchase flight tickets as they were all cancelled by the airlines. The Purchaser was also required to self-isolate upon returning to her home country.
- In July 2021, the Purchaser rented out half of the rental unit, or two out of four bedrooms, to tenants for \$2,800.00 per month. These tenants continued to reside in the rental unit until they moved out in March 2023.
- The Purchaser returned to British Columbia on December 28, 2021. The Purchaser stayed at the rental unit for a month and stayed with her separated spouse and children for another month. The Purchaser then travelled abroad to another country for a business trip. Following this trip, the Purchaser returned to her home country on February 28, 2022.
- The Purchaser's grandmother passed away in November 2022, after being hospitalized for approximately half a year. The Purchaser returned to British Columbia on January 15, 2023. The entire rental unit has been re-rented to new tenants since March 2023. The Purchaser's plan is to return to her home country in May 2023, as her business is there.

The Purchaser submits that she rented part of the rental unit at a lower price because she was stuck abroad and had no choice. The Purchaser submits that she only rented out a part of the house to make extra income while satisfying her own residence requirement. The Purchaser argues that she did not maliciously make the Tenants

move out. The Purchaser submits that she did not understand the local legal regulations as a new immigrant and believed the Tenants were the responsibility of the previous owners, who would have nothing to do with the Purchaser after the Purchaser gave compensation. The Purchaser describes that she is currently experiencing financial and family difficulties. The Purchaser submits that if she did break the law, she would be willing to compensate the Tenants for the loss of the difference in rent paid by the Tenants for one year.

The Purchaser submitted additional evidence as follows:

- Contract of purchase and sale and addendum
- Proof of rent received
- Proof of airfare to and from the Purchaser's home country
- A photo of the Purchaser's grandmother during hospitalization
- A screenshot of a section from a news article regarding a covid-19 lockdown in the Purchaser's city

Analysis

1. Are the Tenant entitled to compensation of 12 months' rent?

In this case, I find the Two Month Notice was issued pursuant to section 49(5) of the Act. Section 49(5) of the Act 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:
 - (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 find the Purchaser had requested in writing for the Two Month Notice to be issued to the Tenants by signing the Buyer's Notice.

Based on the evidence presented, I am satisfied that the Two Month Notice was a valid notice to end tenancy under the Act, and that the stated purpose of the Two Month

Notice was for the Purchaser or a close family member of the Purchaser to occupy the rental unit.

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

- (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.

(emphasis underlined)

In other words, the onus is on the purchaser to prove that they accomplished the purpose for ending the tenancy under section 49(5) of the Act within a reasonable time, and that they used the rental unit for the stated purpose 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.

I note that this is a statutory compensation that is separate and distinct from the \$10,000.00 paid by the Purchaser to the previous owners, which in any event would not have been paid to the Tenants.

Based on the timeline provided by the Purchaser, I find the Purchaser has not lived at the rental unit for at least six months since taking possession.

I also do not find the Purchaser to suggest that a close family member had lived in rental unit at any time. I find the Purchaser's separated spouse and their children continued to reside in their previous home.

In addition, I note the Purchaser re-rented a portion of the rental unit to other tenants shortly after taking possession. According to Residential Tenancy Policy Guideline 2A:

Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, a landlord (and by extension, a purchaser) cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord (or purchaser) or close family member for at least 6 months (see *Blouin v. Stamp*, 2021 BCSC 411).

Based on the foregoing, I find the rental unit was not occupied by the Purchaser or a close family member of the Purchaser beginning within a reasonable period after the effective date of the Two Month Notice and for at least six months. Therefore, I find the Purchaser did not accomplish the stated purpose of the Two Month Notice.

Under section 51(3) of the Act, a purchaser may be excused from paying compensation to the tenant if there were “extenuating circumstances” that “prevented” the purchaser from accomplishing the stated purpose of the notice to end tenancy, as follows:

(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.

(emphasis underlined)

Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy describes extenuating circumstances as follows:

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.

(emphasis underlined)

As noted above, extenuating circumstances are situations where it would be unreasonable and unjust for compensation to be paid, typically because of matters that could not be anticipated or were outside a reasonable owner's control.

First, the Purchaser argues that she had to return to her home country to care for her grandmother who was ill. However, I find the Purchaser has not provided sufficient evidence to support this claim. I find the Purchaser did not provide evidence such as communication records with her family members, her grandmother's medical records, or details of the Purchaser's obligations, to show that the Purchaser's trips to her home

country in March 2021 or February 2022 were related to her grandmother's illness. I find the Purchaser only submitted an undated photo of her grandmother in support of this claim. I find the Purchaser's evidence indicates that she was running and continues to run her business in her home country. I also note the Purchaser's evidence that her grandmother passed away in November 2022, which was more than a year after the Purchaser took possession of the rental unit.

In addition, I find the Purchaser had signed the Buyer's Notice indicating her intention to move into the rental unit on March 4, 2021, but left Canada on March 10, 2021. I find the Purchaser has not provided sufficient evidence to clarify if her family situation had changed in that short period of time.

Second, the Purchaser argues that she was unable to return to British Columbia by June 2021 as planned due to lockdown restrictions in her home country. However, I find the Purchaser has not provided any clear start or end dates for any travel restrictions that she may have experienced. I find the Purchaser submitted a screenshot of part of an undated news article, which indicates that travel to and from the Purchaser's city was suspended. I note this article refers to a global sporting event which implies that the lockdown could have started in or around December 2021 or January 2022. However, the article itself does not refer to any specific dates. I find the Purchaser was able to return to Canada in December 2021, perhaps just before the start of the lockdown. I also find the Purchaser has not provided evidence to show that after February 28, 2022, the Purchaser was prevented from returning to Canada until January 2023 due to any lockdown restrictions.

Third, I find the Purchaser's spouse and children could have moved into the rental unit but chose not to do so. I find the Purchaser has not provided any documentary evidence to confirm when she separated from her spouse. I note the Purchaser's evidence that her separated spouse did not want to move into the rental unit anymore due to the split. However, I do not find this to be an extenuating circumstance, as I find this to be akin to a party simply changing their mind about moving in. Furthermore, I note the Purchaser acknowledged that she stayed with her separated spouse and their children at the other residence for about one month in 2022. Therefore, I am unable to find that the Purchaser's spouse and children were prevented from moving into the rental unit due to an extenuating circumstance.

Based on the foregoing, I find the Purchaser has not met her onus to prove that she or her close family members were prevented from moving into the rental unit due to matters that could not be anticipated or were beyond their control.

I conclude there is insufficient evidence of extenuating circumstances which prevented the Purchaser from accomplishing the stated purpose of the Two Month Notice, such that the Purchaser may be excused from paying compensation to the Tenants.

I note the Purchaser sought a reduced amount of compensation to be awarded to the Tenants. However, I do not have discretion to change the statutory compensation amount if I am unable to find extenuating circumstances that would excuse payment of the compensation in its entirety.

Pursuant to section 51(2) of the Act, I order the Purchaser to pay 12 months' rent to the Tenants, or $\$3,500.00 \times 12 \text{ months} = \$42,000.00$.

2. Is the Tenant entitled to reimbursement of the filing fee?

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

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Section 51(2) Compensation ($\$3,500.00 \times 12 \text{ months}$)	\$42,000.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$42,100.00

Conclusion

The Tenants' claims for compensation of 12 months' rent and reimbursement of the filing fee are granted.

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenant a Monetary Order in the amount of **\$42,100.00**. This Order may be served on the Purchaser, 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: June 16, 2023

Residential Tenancy Branch