



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

On October 12, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with J.M. attending as an advocate for the Tenant. As the Tenant named J.M. incorrectly as a Tenant on this Application, his name has been removed from the Style of Cause on the first page of this Decision accordingly. A.B. attended the hearing as an agent for the Landlord. He advised that he did not own any part of the rental unit and that the Landlord was the owner of the rental unit. As a result, the Style of Cause on the first page of this Decision has been amended to remove A.B. as a Respondent.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages were discussed, and there were no issues pertaining to service. As such, all parties’ evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

Background and Evidence

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

All parties agreed that the written tenancy agreement started on December 1, 2016, that rent was currently established at an amount of \$710.00 per month, and that it was due on the first day of each month. A security deposit of \$325.00 was also paid. A copy of the written tenancy agreement was submitted as documentary for consideration.

A.B. advised that the Tenant was served the Notice by hand on or around February 10, 2022. The reason the Landlord checked off on the Notice was because the "The child of the landlord or the landlord's spouse" would specifically be the persons occupying the rental unit. The effective end date of the tenancy was noted as April 30, 2022, on the Notice. All parties agreed that the Landlord did not share a kitchen or bathroom with the Tenant despite this seeming to be the case according to the addresses on the Notice.

He then testified that he is the Landlord's son, and as per the statement submitted as documentary evidence, he advised that his brother, and his brother's son, moved into the rental unit after the effective end date of the tenancy on the Notice. He stated that his brother's son was accepted into school and that his brother then accepted a job elsewhere. He acknowledged that his brother vacated the rental unit after approximately two months, and that the rental unit was then re-rented to a new tenant in or around August 2022. He was afforded multiple opportunities to provide any extenuating circumstances that prevented the Landlord from using the property for the stated

purpose for a period of at least six months after the effective date of the Notice. However, he would only continue to repeat that his brother accepted a job out of town, and that his brother's son left for school.

The Tenant advised that he would drive by the rental unit immediately after the effective date of the Notice and he did not see anyone living in the rental unit. He testified that the Landlord's one son would live illegally in a trailer on the driveway. As well, it is his belief that there were new tenants in the rental unit shortly after he gave up vacant possession of the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord served the Notice because he wanted his child to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated February 10, 2022, and Section 51 of the *Act* changed on November 16, 2020, which incorporated the following changes to subsections (2) and (3) as follows:

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.

At the time the Notice was served, A.B. advised that the intention was for his brother to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after he gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that “The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).”

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot

convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about 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 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.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the child of the Landlord or the Landlord's spouse. However, the undisputed evidence before me is that the Landlord's son clearly did not occupy the rental unit for at least six months after the effective date of the Notice. As such, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

In considering A.B.'s submissions, I acknowledge that the Landlord's plan was for his child to move into the rental unit, and while it is noted that the son did move in, A.B. did

not provide any valid reason that would satisfactorily qualify as an extenuating circumstance that prevented his brother from occupying the rental unit for at least six months after the effective date of the Notice. Neither his brother accepting a job, nor his brother's son being accepted into school could not have been reasonably anticipated or were outside the Landlord's control.

Given my assessment of the evidence and testimony before me, I am satisfied that there were no extenuating circumstances that prevented the Landlord or his child from occupying the rental unit and residing there for at least six months after the effective date of the Notice. As such, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$8,520.00**.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$8,520.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be 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 28, 2023

Residential Tenancy Branch