



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code **MNETC**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act) in which the Tenants seek:

- compensation from the Purchaser related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 24, 2022 (2 Month Notice) pursuant to sections 51(2); and
- authorization to recover the filing fee of the Application from the Purchaser pursuant to section 72.

The Purchaser, the Purchaser's agent (NA) and the two Tenants (RD and HB) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witness (JR) was called during the hearing by the Purchaser to provide testimony.

HB stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (NDRP Package) on the Purchaser in-person on February 8, 2023. The Purchaser acknowledged she received the NDRP Package from the Tenants. As such, I find the NDRP Package was served on the Purchaser in accordance with the provisions of sections 88 and 89 of the Act.

The Purchaser stated she served her evidence on the Tenants by posting it by mail on May 29, 2023. The Tenants acknowledged they received the Purchaser's evidence. As such, I find the Tenants were served with the Purchaser's evidence in accordance with the provisions of section 88 of the Act.

Issues to be Decided

Are the Tenants entitled to:

- compensation from the Purchaser in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

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

The Purchaser submitted into evidence a copy of the signed tenancy agreement, dated July 8, 2019, between the two former landlords and RD. The parties agreed tenancy agreement states the tenancy commenced on August 1, 2019, on a month to month basis, with rent of \$1,700.00 payable on the first day of each month. The parties agreed the Tenants vacated the rental unit on October 1, 2022. Based on the foregoing, I find there was a residential tenancy between the former landlords and RD and that I have jurisdiction to hear and adjudicate the Application.

HB submitted into evidence a copy of the 2 Month Notice and the Buyers Notice to Seller for Vacant Possession. HB acknowledged the 2 Month Notice was served on them by the former landlords. The 2 Month Notice stated the effective date for the Tenants to vacate the rental unit was October 31, 2022. The 2 Month Notice stated the reason for ending the tenancy was:

- All 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 stated the residential property in which the rental unit was located was purchased by her, her husband (KS) and their daughter (MD). The Purchaser stated she, KS and MD signed the Buyers Notice to Seller for Vacant Possession in which they requested the former landlords to give the Tenants notice to end the tenancy. The Buyers Notice stated the 2 Month Notice was required to give the Tenants until October 31, 2022 to vacate the rental unit. The Purchaser submitted into evidence a copy of the Buyers Notice that was signed by the Purchaser, KS and MD. The Purchaser stated she

and her family moved into the rental unit on November 1, 2022. The Purchaser stated it was the intention of the purchasers that the father (FR) of KS would occupy the rental unit.

The Purchaser stated that on or around September 15, 2022, FR decided he would not be able to move into the rental unit because his brother (SS) was critically ill in India and that he would be returning to India to see SS. The Purchaser stated FR flew to India on November 20, 2022 and was scheduled to return on February 3, 2023. The Purchaser stated SS died on November 19, 2022. The Purchaser stated FR extended his stay in India to take care of SS's family and attend to estate matters and he did not return to Vancouver until March 30, 2023. The Purchaser submitted into evidence copies of the original travel itinerary and revised travel itinerary provided by the travel agency that made the travel arrangements as well as a copy of the death certificate for SS.

HB stated the Tenants found an advertisement in which the rental unit was advertised for rent for \$3,000.00 that appeared on Facebook Marketplace about five days after the 2 Month Notice was served on them. HB stated the Tenants went to the house in which the rental unit was located and, when they looked into the rental unit, no furnishings were visible in it.

The Purchaser admitted she had advertised the rental unit for rent on Facebook Marketplace but stated that the purchasers did not proceed with renting the unit. The Purchaser denied the rental unit did not have any furnishings in it when the Tenants came to the residential property.

JR was called by the Purchaser to provide testimony. JR stated he is a friend of the purchasers of the residential property and that he helped them move into the residential property. JR stated he moved FR's furnishings into the rental unit around the middle of November 2022 and that he never moved any of the furnishings out of the rental unit. JR stated that he and other family members would use the rental unit from time to time as a quiet area when he visited. JR stated FR has been living in the rental unit since FR returned from India.

Analysis

The Tenants seek \$20,400.00 compensation pursuant to section 51(2) of the Act on the basis the Purchaser failed to use the rental unit for the stated purpose in the 2 Month Notice.

Subsection 49(1)(a) defines close family member as:

[...]

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

[...]

Sections 51(5) and 51(8) state:

- (5) A landlord may 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.

- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Pursuant to section 49(8), the Tenants had the option of making an application for dispute resolution to dispute the 2 Month Notice on the grounds the Purchaser or a close family member, did not intend in good faith to occupy the rental unit. Instead, the Tenants accepted the 2 Month Notice and vacated the rental unit on October 1, 2021. As such, the provisions of section 49(3) regarding the requirement that a purchaser, or close family member intend, in good faith to occupy the rental unit do not apply to the issues being considered at this hearing.

Subsections 51(2) and 51(3) of the Act state:

- 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.

[emphasis in italics added]

In contrast to section 49(8) of the Act, section 51(2) does not involve a consideration of whether the purchaser was acting in good faith to use the rental unit for the purpose stated in the Two Month Notice to End Tenancy. Instead, section 51(2) requires a purchaser to pay compensation to a tenant where the purchaser does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period of time and has been used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenant under the Act. PG 50 states in part:

F. 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 in italics added]

The Purchaser stated it was the intention of her and KS that FR would move into the rental unit after the Tenant's vacated it. Based on the testimony of the Purchaser, I find, on a balance of probabilities, that FR is the father of the Purchaser's husband and that FR is a close family member pursuant to the definition set out in section 49(1)(a) of the Act. The Purchaser admitted KS did not move into the rental unit within a reasonable period of time after the effective date of the 2 Month Notice or use the rental unit for his own exclusive use for a period of at least six months. Based on the foregoing, I find the rental was not used for the purpose stated in the 2 Month Notice. As such, the Purchaser did not comply with section 51(2) of the Act.

The Purchaser stated that on or around September 15, 2022, FR decided he would not be able to move into the rental unit because SS was critically and that he would be returning to India to see SS. The Purchaser provided copies of FR's travel itinerary that stated FR was scheduled to leave Vancouver for India on November 20, 2022. The Purchaser provided a copy of a death certificate that stated SS died on November 19, 2022. The Purchaser stated FR extended his stay in India to take care of SS's family.

The Purchaser provided a copy of FR's revised travel itinerary showing FR was scheduled to return to Vancouver on March 30, 2023. To corroborate her testimony, the Purchaser provided copies of the original travel itinerary and revised travel itinerary provided by the travel agency that made the travel arrangements as well as a copy of the death certificate for SS.

Although the Purchaser admitted the purchasers placed an advertisement to rent the rental unit on Facebook Marketplace, she stated the purchasers did not proceed to rent the unit. JR stated he moved FR's furniture into the rental unit in mid-November. JR further stated FR's furniture remained in the rental unit until FR returned from India at the end of March 2023 and that FR has been occupying the rental unit since that time.

I find the need for FR to travel to India to visit SS, who was critically ill, was beyond the control of the Purchaser. I find the death of SS demonstrates he was critically ill at the time FR should otherwise have moved into the rental unit within a reasonable period of time after the effective date of the 2 Month Notice. Based on the Purchaser's testimony, it is my opinion there were extenuating circumstances that prevented the Purchaser from accomplishing the stated purchase for ending the tenancy and from using the rental unit, for that stated purpose for at least six months' duration, beginning within a reasonable period after the effect date of the 2 Month Notice. As such, I dismiss the Application without leave to reapply.

As the Tenants have not been successful in the Application, I find they are not entitled to recover the filing fee for the Application.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

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: July 16, 2023

Residential Tenancy Branch