



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenants applied for dispute resolution (Application) and seek the following:

- Compensation of \$28,600.00 under section 51 of the *Residential Tenancy Act* (the Act) because their tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use (the Notice) and the Landlord did not use the rental unit (the Property) for the stated purpose; and
- to recover the cost of the filing fee under section 72 of the Act.

The Landlord and the Tenants attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenants testified they served the Notice of Dispute Resolution Package (Materials) on the Landlord on April 21, 2023 via registered mail. The Landlord confirmed receipt of the Materials and raised no issues with service. I find that in accordance with sections 89 and 90 of the Act that Tenants' Materials were sufficiently served to the Landlord.

The Landlord testified they had not served their evidence on the Tenants. They stated they believed that by providing a copy to the Residential Tenancy Branch that the Tenants would receive a copy also. The Landlord confirmed receiving a copy of the Respondent Instructions document with the Tenants' Materials which outlines the requirement for respondents to serve their evidence on the applicant.

Rule 3.15 of the *Rules of Procedure* states that the respondent's evidence must be received by the applicant not less than seven days before the hearing. Per rule 3.17 of

the *Rules of Procedure* I exclude the Landlord's evidence from consideration as the Tenants were not served in accordance with the *Rules of Procedure*.

Issues to be Decided

1. Are the Tenants entitled to the requested compensation?
2. Are the Tenants entitled to recover the filing fee from the Landlord?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenants seek compensation of \$28,600.00 which is equivalent to twelve months' rent based on the Landlord failing to use the Property for the stated purpose on the Notice.

The parties agreed on the following regarding the tenancy:

- The tenancy began on October 1, 2021 when the Landlord took ownership of the Property and a new tenancy agreement was signed.
- The written tenancy agreement was entered into evidence.
- The tenancy was for a fixed term ending March 31, 2022 and on a month to month basis after that.
- The Tenants vacated the Property on May 30, 2022 in accordance with the Notice.
- When the tenancy ended, rent was \$2,600.00 per month.

The Notice was entered into evidence and is signed February 28, 2022 and provides an effective date of May 31, 2022. The reason for the Notice being given is that the unit will be occupied by the father or mother of the landlord or landlord's spouse.

The Landlord testified as follows. The Property is old and had mould in it which was dangerous for their mother. Their mother has Parkinson's disease, so the Landlord is concerned for her health.

The Landlord changed their primary residential address to the Property on September 1, 2022. They and their daughter began to move their belongings to the Property soon after. The Landlord's mother is not a Canadian citizen, but a US citizen. She spends time either living with the Landlord in Canada or receiving healthcare in the US. The Landlord works in California so their time is split between Canada and the US.

Between May 31, 2023 and for the next four months, the Landlord was trying to fix the mould in the Property. There was mould "all over the place". They hired a handyman, and they told the Landlord it would need more money to fix the issue. The piping within the Property was another issue that needed work and they hired a plumber for this.

On October 15, 2021 the Landlord engaged the services of a plumber to inspect the Property. The plumber advised the piping needed to be updated. There was no mention of mould in the Property in the plumber's report. However, the Tenants had warned the Landlord about the mould in the Property when the Landlord took ownership in October 2021.

The Landlord's mother moved into the Property in mid-September 2022 and from then she spent time between the Property and the US. The Landlord stated of their mother, "she actually lived in the US" but travelled with the Landlord when they came back to Canada after working in the US.

Pipes in the Property were leaking after heavy rain in late September or early October 2022 and plumbing needed to be fixed. The Landlord and their mother continued to reside in the Property. Then there was significant damage to the Property on December 23, 2022 after heavy rain caused a significant flood and all the carpets and the bed had to be removed due to the water damage. Drywall was also damaged, and insurers carried out an inspection and informed the Landlord the Property was severely damaged. The Landlord and their mother stopped living at the Property on December 25, 2022 due to the damage that occurred on December 23, 2022.

Tenant HD testified as follows. Before the sale of the Property was finalized, the Landlord, their brother and realtor visited the Property. During the visit the Tenant spoke with them and asked them to consider the mould and the "illegal" suite in the basement before the sale was completed.

Downstairs in the Property was a storage room, a bedroom, a common room and a living room. The Tenant's parents, who had health many issues, had lived in the basement suite for the last four years. The Tenant found the condition in the basement to be habitable. Had they been inhabitable, their parents would have lived upstairs. There was one room in the basement which had a mould issue that the Tenant was aware of during the tenancy, which was the bedroom. For that reason, the Tenant's parents slept in the common room.

The Tenant stated they told the Landlord of the mould issue, the broken dishwasher, rainwater flooding and old electrical wiring in the Property both when the Landlord bought the Property in October 2021 and when they gave the keys to the Landlord on May 30, 2022. They thought it was important to let the Landlord know of these issues as they knew their mother had health problems. The Tenant described the Landlord's response as "dismissive", and they felt the Landlord did not see the issues as a problem.

In response to the Tenant's testimony, the Landlord confirmed that the Tenants did indeed warn them of the issue of mould when the Property was purchased in October 2021. Then when the Tenants were vacating the Property on May 30, 2022, the Tenants said there was mould "throughout the property". The Landlord did not see any mould when they attended the Property on May 30, 2021, though their brother, who is a civil engineer, said they believed the mould issue was fixable.

The Tenant stated that as of May 30, 2021, the mould was manageable and confined to one room in the basement of the Property.

The Landlord then stated the mould was in the room in the basement and a room in the back of the property. They decided they wanted to fix the mould before their mother moved into the Property. The mould was partially fixed in September 2022 and the Landlord and their mother moved in after that.

I asked the Landlord if their mother could have lived in the Property and made use of rooms other than the basement suite. The Landlord stated they wanted to fix the mould before their mother moved in.

I asked the Landlord if there were any surveys of the Property carried out around the time of purchase and if they revealed any issues with mould. The Landlord stated there were surveys completed but they did not pick up any issues with mould.

Analysis

Section 49(3) of the Act states that a landlord who is an individual may end a tenancy if the landlord, or a close family member of the landlord intends in good faith to occupy the rental unit. Close family members are defined in the same section of the Act as meaning the individual's parent, spouse or child, or the parent or child of that individual's spouse.

In this case, the Notice indicates the Property will be occupied by the father or mother of the landlord or landlord's spouse. The Landlord testified they planned to have their mother reside in the Property. Given this, I will only be considering the Landlord's mother's occupancy of the Property in this Decision as this is the stated purpose for ending the tenancy on the Notice.

Section 51(2) of the Act says that if the stated purpose on the notice to end tenancy is not accomplished within a reasonable amount of time and for a duration of at least 6 months from the effective date of the notice to end tenancy, the landlord must pay the tenant twelve months' rent compensation. However, section 51(3) of the Act states that an arbitrator may excuse a landlord from paying this compensation if, in the arbitrator's opinion, extenuating circumstances prevented the stated purpose on the notice to end tenancy from being accomplished.

The effective date of the Notice is May 31, 2022 which means that to fulfil the stated purpose on the Notice, the Landlord's mother would have needed to occupy the Property within a reasonable amount of time and occupy the Property until November 30, 2022 which is six months from the effective date of the Notice.

The Landlord testified that their mother occupied the Property from "mid-September 2022" which is around three and a half months after the effective date of the Notice. Policy Guideline 50 on Compensation for Ending a Tenancy discusses what is a reasonable period for a landlord to begin using the property for the stated purpose for ending the tenancy.

The Guideline states that it will usually be a short period of time, and in the case where a landlord's close family member intends to move it, a reasonable period to start using the property would be about 15 days. The guideline also acknowledges that longer periods may be reasonable depending on circumstances, for example, if carpeting had

to be replaced, delaying the move in would be reasonable as the work could be completed faster while the property was empty.

Having considered the testimony of the Landlord, I find that the period of over three months is not a reasonable one for the stated purpose on the Notice to be accomplished. Though I accept that there are situations where repairs and modifications need to be carried out to a property before it can be occupied, I find in this case, the period of over three months to be excessive and well beyond a reasonable period.

Given the above finding, I must consider if the Landlord put forward valid extenuating circumstances which would explain the reason for not achieving the stated purpose of the Notice within a reasonable amount of time and therefore excuse them from compensating the Tenants.

Policy Guideline 50 on Compensation for Ending a Tenancy defines extenuating circumstances as when 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. The Landlord has the burden of proving, on the balance of probabilities, that they are excused from paying compensation to the Tenants on the basis that extenuating circumstances prevented the stated purpose on the Notice from being accomplished within a reasonable amount of time.

The Landlord stated they wanted to carry out repairs to remedy the issue of mould within the Property before they moved their mother in, and this is why their mother could not move in sooner. They were concerned about impacts of the mould on their mother's health as she has Parkinson's disease.

Having considered the testimony of both parties, I find the Tenants notified the Landlord of the issue of mould within the Property before the purchase went ahead in October 2021, and again before the effective date of the Notice on May 30, 2021. Given this, I find that the Landlord had more than ample notice of the issue of mould within the Property and therefore had considerable time to investigate the scope of the mould in the Property and take steps remedy it, should they have wished.

I found the Tenant's testimony regarding the severity of the issue of mould within the Property to be clear, consistent and more convincing than that of the Landlord. The Tenant was clear that the mould affected only one of the rooms in the basement suite of the Property. While they conceded that their parents did not use that room because of

the mould, they were clear that rest of the basement suite, and the Property was habitable. The Landlord initially stated the mould was “all over” the Property, then adjusted their testimony to align more closely with the Tenant’s. Based on the Landlord’s testimony I find the survey of the Property at the time of purchase revealed no issues with mould. This leads me to conclude that the mould was confined to just one room within the basement suite.

Based on the testimony of the Landlord, I find the services of a handyman were obtained, rather than a specialist in mould treatment, to fix the issue. This leads me to conclude that the mould issue within the Property was also a relatively minor one. Nothing within the Landlord’s testimony indicated to me why the rest of the Property could not be occupied by their mother, given that there were three bedrooms and one bathroom upstairs in the Property which had very recently been occupied by the Tenants and their family without issue. Additionally, I found the Landlord could not adequately outline exactly what work was required to remedy the mould issue or even provide an approximate timeline for the work, apart from that the work was partially completed by mid-September 2022 and their mother moved in at that point.

In summary, I find the Landlord was adequately notified of the issue of mould within the Property, therefore could have reasonably anticipated having to fix the issue at some point in the future, yet they failed to take any steps to inspect the Property for mould or have the issue fixed prior to their mother moving in. I also find, on a balance of probabilities, that the severity of the mould was not significant enough to warrant the Property remaining vacant for a period of over three months after the effective date of the Notice, even considering the Landlord’s mother’s health issues.

Keeping in mind that extenuating circumstances are typically those that could not be anticipated or were outside a reasonable owner’s control, I find that the Landlord has failed to prove, on a balance of probabilities, that reasons for not occupying the Property within a reasonable amount of time from the effective date of the Notice were valid extenuating circumstances.

Based on the Landlord’s testimony, I accept that the Property was severely damaged on December 23, 2022 and their mother had to vacate the Property. However, as this is beyond 6 months from the effective date of the Notice this is of no relevance to my Decision.

Given the above, I do not find the Landlord has proven, on the balance of probabilities, the extenuating circumstances they put forward to be valid and therefore I can not excuse them from compensating the Tenants under Section 51(2) of the Act.

Therefore, I grant the Tenants' Application. The Tenants are entitled to compensation equivalent to 12 months' rent. I issue the Tenants a Monetary award of \$28,600.00 (\$2,600.00 x 12).

As the Tenants were successful in their Application, I authorize the Tenants to recover the filing fee in the amount of \$100.00 from the Landlord.

Conclusion

The Tenants' Application is granted.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Compensation under Section 51(2) of the Act	\$28,600.00
Filing fee	\$100.00
Total	\$28,700.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 07, 2023

Residential Tenancy Branch