



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 29, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an or granting the return of the filing fee

The Tenants and the Landlord attended the original hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Notice of Hearing and the Tenants' documentary evidence. I find these documents were sufficiently served pursuant to Section 88 and 89 of the Act. The Landlord stated that he served his evidence to the Residential Tenancy Branch, however, did not serve a copy of his evidence to the Tenants as he did not have their forwarding address. The Tenants stated that they included their forwarding address in their application which the Landlord received.

Preliminary Matters

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.

During the hearing, the parties agreed to adjourn the hearing to allow the Landlord an opportunity to serve the Tenants with his evidence. The hearing was adjourned accordingly.

The hearing was reconvened on August 14, 2023 and was attended by both the Tenants and the Landlord. At the start of the reconvened hearing, the Tenants confirmed that they had received the Landlord's evidence. As such, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

The parties were given an 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.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2020. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,700.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$850.00 which has since been returned to the Tenants.

The parties testified and agreed that the Landlord served the Tenants with the Two Month Notice dated April 4, 2022, with an effective vacancy date of June 1, 2022 (the "Two Month Notice"). The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 souse)."

The parties testified and agreed that the Tenants vacated the rental unit on June 1, 2022 in compliance with the Two Month Notice.

The Tenants are claiming for compensation equivalent to one month of rent as it is indicated on the Two Month Notice that they are entitled to this compensation. The Landlord confirmed that he has not yet compensated the Tenants.

The Tenants are also claiming compensation for their moving costs. The Tenants are seeking \$175.02 for the moving truck, and also \$26.00 for gas. The Landlord did not have a response for these claims.

The Tenants are claiming for compensation equivalent to twelve times the rent as the Landlord did not accomplish the stated purpose of the Two Month Notice. The Tenants stated that shortly after moving out of the rental unit, they noticed a rental advertisement listed by the Landlord's daughter seeking to re-rent the rental unit for \$2,100.00 a month instead of the \$1,700.00 the Tenants had been paying. The Tenants provided a copy of the listing in support.

The Tenants stated that they attended the rental unit approximately three weeks after moving out to collect mail. The Tenants stated that they spoke to the new occupants of the rental unit who were not the Landlord or their close family member. As such, the Tenants feel entitled to compensation in the amount of \$20,400.00 which is equivalent to twelve times the amount of rent.

The Landlord stated that it was his intent to have his daughter occupy the rental unit at the end of the tenancy. As such, the Landlord served the Tenants with the Two Month Notice for this purpose. The Landlord stated that when the tenancy ended on June 1, 2022, his daughter wasn't aware of the requirement to occupy the rental unit, therefore, she listed the rental unit for rent.

The Landlord stated that he notified his daughter that she was required to occupy the rental unit. The Landlord stated that he sold the rental unit to his daughter and denied that the rental unit was re-rented. The Landlord stated that his daughter and her boyfriend moved into the rental unit on August 1, 2022. The Landlord provided a copy of the 2022 property tax assessment listing himself and his daughter as the owners of the property, as well as a state of title certificate showing the Landlord's daughter as being the owner of the rental unit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenants are claiming one month rent in compensation as the Tenants were served a Two Month Notice from the Landlord.

Section 51(1) of the Act states;

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, I accept that the parties agreed that the Landlord served the Tenants with the Two Month Notice. I accept that the parties agreed that the rent at the end of the tenancy was \$1,700.00. I accept that the parties agreed that the Landlord has not yet compensated the Tenants with the equivalent of one month rent as compensation that the Tenants are entitled to pursuant to Section 51 of the Act. As such, I award the Tenants compensation in the amount of **\$1,700.00**.

The Tenants are claiming compensation in the amount of \$20,400.00 which represents twelve months of rent as the Landlord did not accomplish the stated purpose of the Two Month Notice for at least six months after the effective date of the notice.

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on

the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

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

In this case, the onus is on the Landlord to demonstrate that they accomplished the stated purpose of the Two Month Notice. I find that the Landlord confirmed that he sold the rental unit to his daughter, who was the close family member that the Landlord intended on having occupy the rental unit. I find that the change of ownership does not in itself prove that the Landlord's daughter occupies the rental unit.

I find that the Landlord has provided insufficient evidence to demonstrate that his daughter moved into the rental unit and has occupied the rental unit for at least six months.

Instead, I find that the Tenants have provided sufficient evidence to demonstrate that the Landlord's daughter re-listed the rental unit for a higher rent amount soon after the Tenants vacated the rental unit. Had the Landlord truly intended on having his daughter occupy the rental unit, there would have been no reason to list the rental unit for rent. I find this demonstrates that the Landlord has issued the Two Month Notice in bad faith.

Based on the above I find that the Tenants are entitled to **\$20,400.00**, in compensation from the Landlord, pursuant to section 51(2) of the *Act*.

The Tenants have claimed for moving costs. I find that the compensation awarded to the Tenants under Section 51(2) of the *Act* sufficiently compensates the Tenants for the Two Month Notice being served in bad faith. Therefore, I decline to award the Tenants further compensation relating to their move from the rental unit and dismiss the claims for the moving truck and gas, without leave to reapply.

As the Tenants were partially successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$22,200.00.

Conclusion

The Tenants are entitled to a monetary order in the amount of \$22,200.00. The Tenants are provided with this Order 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: August 14, 2023

Residential Tenancy Branch