

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation under section 51(2) of the Act because the landlord or their close family member failed to accomplish the stated purpose for ending the tenancy set out on the notice to end tenancy; and
- authorization to recover the filing fee for this application from the Landlord under section 72(1) of the Act.

Tenant H.K. attended the hearing for the Tenants.

Landlords H.M. and Y.G., and their son Y.M., who acted as their agent, attended the hearing for the landlords.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The landlords acknowledged service of the Proceeding Package by registered mail and raised no concerns with regards to the service date or method. I therefore find them duly served in accordance with the Act.

Service of Evidence

Based on the documentary evidence before me, including registered mail receipts and tracking numbers, and the affirmed testimony of the parties and Agent, I find that the tenant's documentary evidence was sent to the landlords by registered mail on October 28, 2022, along with the Proceeding Package. As the landlords acknowledged receipt and raised no concerns with regards to the service date or method, I find them duly served in accordance with the Act.

Although the agent stated that the landlords' documentary evidence was served on the tenants by email on July 6, 2023, the tenant denied receipt and no documentary or other corroboratory evidence to support that it was sent, received, or that the email address used is a valid address of service for the tenants under section 88(j) of the Act or section 43(1) of the regulations, was submitted. The Notice of Dispute Resolution Proceeding (NODRP), which forms part of the Proceeding Package, states that the

Residential Tenancy Branch Rules of Procedure (Rules of Procedure) apply and provides the web address for them. Rule 3.16 of the Rules of Procedure states that at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and the Rules of Procedure.

Although the agent requested that they be permitted to upload proof of service information during or after the hearing, I declined this request pursuant to rule 3.19 of the Rules of Procedure as the evidence submission deadlines had passed and I did not consider this information to be new and relevant as set out under rule 3.17. As a result, the documentary evidence before me from the landlords has been excluded from consideration as I am not satisfied that it was served on the tenant and I therefore find that they did not have an opportunity to review or prepare to respond to it at the hearing.

Issue(s) to be Decided

Are the tenants entitled to a compensation under section 51(2) of the act because the landlords failed to accomplish the stated purpose for ending the tenancy set out on the Two Month Notice?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

I have reviewed all evidence accepted for consideration, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that a tenancy to which the Act applies existed between them, which ended on July 10, 2022, because the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice). The parties agreed that the Two Month Notice was served on and received by the tenants on approximately May 24, 2023, and that rent at the time the tenancy ended was \$1,560.00.

The Two Month Notice before me is on the 2021 version of the Residential Tenancy Branch (Branch) form, is signed and dated May 24, 2022, and has an effective date of July 31, 2022. It also states that the tenancy is being ended because the rental unit will be occupied by the landlords' child.

The landlords and agent stated that the Two Month Notice was served because the agent and their partner were planning to occupy the rental unit. They stated that in August of 2022, the agent and their partner broke up and the agent got a new job in Burnaby. They stated that the agent therefore wanted to find another place to live closer to work, as the rental unit is in Richmond. The landlords and agent stated that several months of renovations to the property were being done in anticipation of the agent's occupancy of the rental unit, but when plans changed, the property was put on the market for sale instead. The landlords and agent stated that when the Application from

the tenants seeking 12 months compensation under section 51(2) of the act was received in October of 2022, the listing was cancelled, and the agent moved into the rental unit. Although they could not recall the exact date, they stated that the agent moved into the rental unit at either the end of October 2022, or the start of November 2022, and has been living there ever since, and paying \$1,000.00 per month in rent.

The tenant stated that when the Two Month Notice was served, they complied with it, vacating the rental unit early on July 10, 2022, as at that time they had no reason to believe that it had not been served in good faith. The tenant stated that on October 16, 2022, they found the rental unit for sale as they were in the market to purchase their own home, and they called the listing agent. They stated that the listing agent advised them that the unit was vacant, and therefore a quick closing date was possible. The tenant stated that they then filed the Application as not only did the landlords' son fail to occupy the rental unit within a reasonable period after the effective date of the Two Month Notice, July 31, 2022, as required, they believed that the landlord's son had never intended to do so. They also argued that the rental unit was renovated not for the landlords' child, but for the purpose of selling the rental unit, as they had asked for similar renovations and repairs throughout their lengthy tenancy without success, and the listing photos show a renovated unit. Further to this, they argued that the landlords' son only began occupying the rental unit after the Application was filed and served in an attempt to prevent the landlords from owing the tenants compensation.

The landlords and agent disagreed that the Two Month Notice had been served in bad faith, stating that when the property was previously placed for sale in 2015, the tenants were not served with an eviction notice. They also stated that they could have ended the tenancy via other notices to end tenancy, such as a One Month Notice to End Tenancy for Cause (One Month Notice) or 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), but chose not to do so as they were accommodating landlords. The landlords denied knowledge of the person the tenant named at the hearing as the listing agent spoken to, and stated that the listing had a preferred possession date of May 2023. Further to this, they stated that they did not need to serve the Two Month Notice to sell the property, as the purchasers could have taken over the tenancy as landlords, or requested that a Two Month be served if they wished to occupy it themselves.

The tenant stated that they were evicted at the peak of the resale and rental markets, which cost them a significant amount of money as their new rental unit was 45% more expensive.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Are the tenants entitled to a compensation under section 51(2) of the act because the landlords failed to accomplish the stated purpose for ending the tenancy set out on the Two Month Notice?

The ending of a tenancy is a serious matter. As such, the Act sets out circumstances under which a tenant who has had their tenancy ended for occupancy by their landlord's close family member, is entitled to compensation if the rental unit is subsequently not used for the required purpose within and for the prescribed time periods. Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, the landlord must pay the tenant an amount that is equal to 12 times the monthly rent payable at the time their tenancy ended, if they cannot establish:

- That steps have been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy; and
- That the rental unit was used for that stated purpose for at least six months' duration thereafter.

Residential Tenancy Policy Guideline (Policy Guideline) #2A states that the landlord bears the burden of proof with regards to the above.

Section 51(3) of the Act states that a landlord or, if applicable, the purchaser who asked the landlord to give the notice, may be excused from paying the above noted compensation, if they can satisfy the arbitrator that extenuating circumstances prevented them from using the rental unit for the stated purpose within and for the required time periods. However, the landlords explicitly stated at the hearing that they are not arguing extenuating circumstances. As a result, I have not considered section 51(3) of the Act further.

I am satisfied by the testimony of the parties and the documentary evidence before me for consideration, that the rental unit was listed for sale three months or less after the end of the tenancy, and without having ever been occupied by the landlords' child. I am also satisfied that the rental unit was renovated by the landlords prior to being listed for sale and that the landlords, by their own admission, only removed the listing because they were served with the Proceeding Package by the tenants.

As a result, I find it more likely than not that the landlords' child was not intending to occupy the rental unit at the time the Two Month Notice was served, and that the landlords would not have removed the rental unit from the market if the tenants had not filed the Application seeking compensation under section 51(2) of the Act. I am also satisfied that if the landlords had not removed the rental unit from the market as a direct result of having been served with the Application, their son would never have moved in. I do not accept the testimony of the landlords and their son, who acted as their agent at the hearing, that the Two Month Notice was served so that the agent and their partner could occupy the rental unit, or that these plans were disrupted when the agent and their partner broke up and the agent got a new job. No documentary or other corroboratory evidence was submitted or accepted by me for consideration in support of this. I also do not accept that the renovations were made for the benefit of the landlords'

son, rather than to facilitate the sale of the rental unit at the best price, as no corroboratory evidence to support this was submitted by the landlords, and as set out above, I am satisfied that the landlords' son had no intention of occupying the rental unit when Two Month Notice was served. In fact, I find it more likely than not that the landlords' son only began occupying the rental unit at the end of October or the start of November in 2022, to reduce the likelihood that compensation would be owed by the landlords to the tenants under section 51(2) of the Act.

Based on the above, I do not find that the agent's occupancy of the rental unit at the end of October or the start of November in 2022, qualifies as occupancy within a reasonable period after the effective date of the Two Month Notice. While the Act does not set out what constitutes a "reasonable period" for the purpose of section 51(2) of the Act, Residential Tenancy Policy Guideline (Policy Guideline) #50 does. Although Policy Guideline #50 states that what is considered reasonable will vary depending on the specific circumstances, it states that a reasonable period is the amount of time that is fairly required for the landlord, or in this case, their close family member, to begin using the property for the purpose set out on the notice. It also states that this will usually be a short amount of time, such as 15 days after vacancy of the rental unit by the tenant(s) if the landlord or their close family member is to occupy the rental unit.

I am not satisfied that the landlords' son's intention to occupy the rental unit only occurred after the Application seeking compensation under section 51(2) of the Act was filed, and only as an attempt to prevent compensation under section 51(2) of the Act from being owed. I am also satisfied that the rental unit was renovated for the purpose of the sale of the property, rather than the agent's occupancy. I therefore find that the three-month period between the effective date of the Two Month Notice and the date the agent began occupying the rental unit, to be unreasonable. As a result, I find that the landlords have failed to satisfy me, as required, that steps to accomplish the purpose set out on the Two Month Notice were taken within a reasonable period after the effective date of the Two Month Notice and that the tenants are entitled to the \$18,720.00 sought pursuant to section 51(2) of the Act.

Are the tenants entitled to recover the filing fee for this application from the landlords?

As the tenants were successful in their Application, I find that they are entitled to recover the \$100.00 filing fee paid for this application from the landlords under section 72(1) of the Act.

Conclusion

Pursuant to sections 51(2), 67, and 72(1) of the Act, I grant the tenants a Monetary Order in the amount of **\$18,820.00** as follows:

Monetary Issue	Granted Amount
Compensation under section 51(2) of the Act	\$18,720.00
authorization to recover the filing fee under section 72(1) of the Act	\$100.00
Total Amount	\$18,820.00

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, it 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 Branch under section 9.1(1) of the Act.

Dated: August 17, 2023

Residential Tenancy Branch