

DECISION

Introduction

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

- a Monetary Order for compensation for the Purchasers failing to accomplish the stated purpose on a notice to end tenancy (the Notice) under section 51 of the Act
- authorization to recover the filing fee for this application from the Purchasers under section 72 of the Act

Tenant DB and Tenant EB attended the hearing for the Tenants.

Purchaser PC and Purchaser RF attended the hearing for the Purchasers.

Service

The Purchasers acknowledged being served with the Tenants' Notice of Dispute Resolution Proceeding but did not receive any evidence from the Tenants. The Tenants affirmed that they were not aware they needed to serve the Purchasers with their evidence. As the Tenants did not serve the Purchasers with their evidence, I am excluding all of the Tenants' evidence pursuant to Rule of Procedure 3.17.

The Tenants acknowledged being served with the Purchasers' evidence.

Issue(s) to be Decided

Are the Tenants entitled to compensation in the amount of \$16,200.00?

Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

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

Evidence was provided showing that this tenancy began on May 1, 2015, with a monthly rent of \$1,350.00, due on the first day of the month.

The Purchasers affirmed that:

- the reason stated on the Notice for ending the tenancy was because: All of 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 effective date of the Notice was April 1, 2023. The Purchasers got possession of the rental unit on April 4, 2023.
- they are not currently occupying the rental unit as it is under renovation. In particular, the basement of the rental unit is undergoing complete renovation, which includes renovating 3 bedrooms, 2 washrooms, and the kitchenette. In addition, the upper unit required some renovations including fixing the exhaust fans in the bathroom, fixing a leak in the bathroom, replacing the pipes, and fixing the roof.
- the Tenants rented the entire property, which included the upper unit and the basement.
- they rented out the upper unit to a new tenant, who is not related to the Purchasers, on May 1, 2023. The new tenant is currently occupying the upper unit of the rental unit.

The Tenants affirmed that:

- the previous landlord served the Notice on the Tenants on January 27, 2023.
- they vacated the rental unit on February 25, 2023.
- they saw that the Purchasers had listed the upper unit of the rental unit as available for rent on March 25, 2023, for \$2,500.00 per month.
- they saw that the Purchasers had relisted the upper unit of the rental unit as available for rent on April 7, 2023, for \$2,200.00 per month.

Analysis

Section 51(2) of the Act states that, if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if:

- 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
- the rental unit is not used for that stated purpose for at least six months' duration.

In addition, according to Policy Guideline 50:

- The onus is on the landlord or purchaser to prove that they accomplished the purpose for ending the tenancy under sections 49 of the Act or that they used the rental unit for its stated purpose under sections 49(6)l to (f) for at least six months.
- A landlord or purchaser 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Purchasers have failed to show that they accomplished the stated purpose for ending the tenancy. I find this because the Purchasers affirmed that they re-rented the upper unit of the rental unit out to a new tenant, who is not related to the Purchasers, on May 1, 2023. As the Purchasers re-rented the upper level of the rental unit, per Policy Guideline 50, they cannot be said to have used the rental unit for the stated purpose. As the effective date of the Notice was April 1, 2023, this means the Purchasers had re-rented a portion of the rental unit out within 1 month of the effective date of the Notice. Based on this, I find that the Purchasers have failed to show that they accomplished the stated purpose for ending the tenancy.

Therefore, I find the Tenants are entitled to a Monetary Order for compensation for the Purchasers failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$16,200.00.

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$16,300.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for compensation for the Purchasers failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act	\$16,200.00
authorization to recover the filing fee for this application from the Purchasers under section 72 of the Act	\$100.00
Total Amount	\$16,300.00

The Tenants are provided with this Order in the above terms and the Purchasers must be served with **this Order** as soon as possible. Should the Purchasers 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 26, 2023

Residential Tenancy Branch