

## **DECISION**

### **Introduction**

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

- a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Tenant S.S. attended the hearing for the tenant.

Landlord S.A. and agent F.H. attended the hearing for the landlord.

### **Issues to be Decided**

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Is the tenant entitled to a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Facts and Analysis**

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The tenancy began on October 1, 2017, with a monthly rent of \$3,400.00, due on first day of the month. The Tenant says the monthly rent amount at the end of the tenancy was \$3,624.40.

The parties agree the Landlord issued a Two Month Notice to End the Tenancy for Landlord's Use of Property in November 2021. The parties agree the Tenant vacated the rental unit by June 2022.

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 must pay the Tenant an amount that is equal to 12 times the monthly rent if the Landlord does not comply with the stated purpose of the Two Month Notice within a reasonable time after service and for at least six months' duration.

The Landlord says they moved into the rental unit in stages, beginning in June 2022 and they continue to reside there as of the date of this hearing, about 14 months later. The Landlord submitted affidavits from two witnesses who say that the Landlord has occupied the rental unit since June 2022.

The Tenant says they believe the Landlord has renovated the rental unit and left the unit vacant for much of that time.

The Landlord provided an invoice for painting and drywall repair saying the job was estimated to start June 16, 2022 and complete by July 7, 2022. The Landlord also provided a receipt for furniture movers dated July 10, 2022. The Landlord provided bills in their name at the rental property address for various dates after June 2022, including bills from Fortis, Hydro, Shaw, BC Ambulance, and their insurance provider.

The bill from BC Ambulance dated July 27, 2022, shows that Landlord HH was transported from the rental unit to the hospital on that date.

The Landlord agrees they have made some repairs to the rental unit in mid June for painting and drywall repair and later restoration which completed near the end of 2022, pursuant to an insurance claim after a flood in the basement around June 26, 2022. However, the Landlord says they did not renovate the unit. I accept the Landlord's evidence that they made reasonable and necessary repairs.

The Tenant says the utility bills submitted by the Landlord are quite low. The Tenant believes this indicates no one lived there at least until February 2023, when the bills increased. The Tenant believes the utility bills show, at most, part-time occupation of the rental unit from February 2023 onward.

The Landlord says their utility bills are low because there are only two of them living there and they are frugal. The Landlord says in the colder months, they use other forms of heat, including wood heat. The Landlord provided an invoice from a heating company indicating that they had their heating system repaired in February 2023.

The Tenant's arguments also implied the possibility that Landlord SA does not reside in the rental unit. The Tenant points out that only Landlord HH has updated their address to the rental unit on their identification, whereas Landlord SA has not. The Tenant says they have attended the Landlord's other residence on three occasions in February, March, and April 2023, to serve documents, and SA has answered the door of the other residence each time.

Landlord SA disputes answering the door of the other residence on those three occasions. However, the Landlord's son lives at the other residence the Tenant is referring to, and it would not be unusual for the Landlord SA to attend that other residence often. The Landlord SA did not directly state why they had not updated their address on their driver's licence when they updated Landlord HH's address. However, the Landlord points out that they still receive mail addressed to the Tenant at the rental

unit, and that it is common for people to delay updating their address for various reasons.

I note that the reason for the Two Month Notice was so that the Landlord or the Landlord's spouse could occupy the unit. If the circumstances were such that only HH occupied the rental unit, that may still satisfy the purpose of the Two Month Notice.

Given the totality of the evidence submitted by the Landlord, and their affirmed testimony, I am satisfied on a balance of probabilities that the Landlord has accomplished the stated purpose on the Two Month Notice.

For the above reasons, the tenant's application for a Monetary Order for compensation under section 51 of the Act is dismissed, without leave to reapply.

**Is the tenant entitled to recover the filing fee for this application from the landlord?**

As the Tenant was not successful in this application, they are not entitled to recover the filing fee under section 72 of the Act.

## **Conclusion**

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The Tenant's 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: August 8, 2023

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Residential Tenancy Branch