

## **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 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

Pursuant to section 58 of the Act, I was designated to hear linked applications with respect to RG's separate claim for compensation under section 51 of the Act.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord acknowledges service of the Proceeding Package and is duly served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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### **Issues to be Decided**

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 their filing fee from the Landlord?

### **Facts and Analysis**

I have considered all the evidence and testimony, but I will only refer to what I find relevant in my decision.

The property contains two rental units, a main suite and a basement suite, which both had separate tenancy agreements. The Applicants, Tenants MA and CA, occupied the main suite of the rental unit and were neighbours with the basement suite tenants RG and TT.

Both parties agree that this tenancy started on October 1, 2020. There was some discussion between the parties on what the last payable month of rent was – based on the submissions at the hearing, I find it more likely that the Landlord's information is accurate which is \$3,416.49 in monthly rent.

The Landlord issued a Two Month Notice to end tenancy on January 30, 2023, which listed an effective date of May 31, 2023. The Tenants exercised their right to move out early, and both parties confirm that the tenancy ended on April 30, 2023. The Landlord states that they started to occupy the rental unit on July 17, 2023.

On June 27, 2023, the Landlord's employer required employees to begin working on-site at least three days a week starting on September 5, 2023. The Landlord's work location is in Washington state. According to the Landlord, because of this return to office initiative, he and his family began to split time between living in Washington state during the week, while returning to their property with the rental unit on weekends and holidays.

RG and TT continued to occupy the basement suite until November 30, 2024. They state that they observed the Landlord's presence sometime towards the end of July 2023, and that they would see him and his dog from time to time throughout August and September 2023. However, after this time they only saw the Landlord occasionally on long weekends on holidays without seeing the dog or other family members.

The Landlord has provided supporting evidence to prove that they started occupying the rental unit on or around July 17, 2023, including: border customs documentation of goods/possessions to prove that they were coming from the USA (July 2023), photographs of items left behind by Tenants in the rental unit, communication emails with the property manager regarding status of the rental unit, communication with the basement suite tenant RG regarding bears knocking over garbage cans (September 2023), financial statements showing purchases in the local area (July – August 2023, and October – November 2023).

Property manager ZC attended the hearing and testified that he visited the Landlord at the rental unit on October 20, 2023, to hand over some keys; ZC states that he did not go inside the rental unit, but it seemed to be occupied based on what he could see from the door.

The Tenants have presented an online advertisement for the rental unit dated November 30, 2023, which indicates that the unit is ready for occupancy. The Tenants argue that this demonstrates that, at least from the date of this advertisement, the Landlord was not occupying the rental unit. The Landlord does not deny that they posted the advertisement, but state that the unit was not rented out until February 2024.

and submitted the new tenancy agreement to substantiate this. When I asked about the photos in the advertisement showing a vacant unit, the Landlord stated that these were their stock photos from when the unit was vacant.

During the hearing, the Landlord presented the argument that the return to office requirement of his employer was an unexpected and unforeseeable event that reduced his ability to occupy that rental unit to the degree that was intended when the Two Month Notice was issued.

**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?**

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least 6 months.

Section 51(3) of the Act says that the landlord may be excused from paying compensation under section 51(2) if extenuating circumstances prevented them from complying with 51(2)(a) and/or 51(2)(b).

Assessing the whole of the evidence and testimony of the parties, and based on the balance of probabilities, I conclude that the Landlord moved into the rental unit on July 17, 2023, and began to occupy it. Given that the Landlord was moving from the United States, I accept that this was a reasonable amount of time from the effective date of the Two Month Notice.

I also believe that the Landlord was required to return to the office in early September 2023, which explains the reduced presence of the Landlord as witnessed by the basement suite tenants. I find that the Landlord ceased to occupy the rental unit for a residential purpose on or around November 30, 2023, when the rental unit was posted as available for rent. When the Landlord put the suite on the rental market, it ceased being used for a residential purpose – even if the rental unit was not yet rented out as the Landlord claims.

However, I believe that the Landlord was put in this circumstance because of the return to office initiative from his US-based employer, which put the Landlord in a difficult circumstance. I found the Landlord's testimony regarding the return to the office to be convincing. The Two Month Notice was issued before the return to office requirement was known by the Landlord. I conclude that the Landlord initially attempted to comply with the occupancy requirement by commuting between Washington State and the rental unit but discovered that this was an untenable situation both financially and practically.

The return to office was unforeseen and outside of the control of the Landlord and I conclude that this was an extenuating circumstance as described in section 51(3).

Therefore, I find the Tenants are not entitled to any compensation under section 51(2) of the Act.

**Is the Tenant entitled to recover their filing fee from the Landlord?**

As the Tenants were unsuccessful in their application, they shall not be entitled to recovering their filing fee.

**Conclusion**

The Tenants' application is dismissed, 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 Act.

Dated: July 8, 2024

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Residential Tenancy Branch