

## **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

The Tenant attended the hearing for the Tenant.

The Landlord and the Landlord's counsel (Counsel) attended the hearing for the Landlord.

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

I find that the Landlord was served on June 5, 2024, by registered mail in accordance with section 89(1) of the Act. Counsel confirmed receipt.

### **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.

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

### **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?

### **Background and Evidence**

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

Both parties agree that on this property there is a house and an attached carriage house. Both parties agree that the carriage house and the main house are two separate

units separated by a door which is usually locked. The units each have their own kitchen and bathrooms. Both parties agree that the Tenant rented the main portion of the house at a rental rate of \$5,000.00 per month due on the first day of every month. Both parties agree that the Tenant moved out of the main portion of the house on August 1, 2023 following the service of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on the Tenant. Both parties agree that on August 1, 2023, the Tenant moved into the coach house at a rental rate of \$2,500.00 due on the first day of each month.

Both parties agree that the Landlord personally served the Tenant with the Notice on May 29, 2023. The Notice was entered into evidence and states that the Tenant must vacate the rental property by August 1, 2023 because the Landlord or the Landlord's spouse will occupy the rental property.

Counsel submitted that the Landlord did not move into the rental property due to extenuating circumstances. Counsel submitted that the Landlord did not move in because of the strange behaviour of the Tenant. Counsel submitted that the Tenant's behaviour was not aggressive but made the Tenant feel uncomfortable with moving in.

Counsel submitted that the Tenant was witnessed naked or half naked in the outdoor spa. Counsel entered into evidence a sworn affidavit from F.R.W. which states that F.R.W. visited the rental property with the Landlord during August 2023 and observed the Tenant taking a shower and using the hot tub topless and surveilling the property.

Counsel entered into evidence a sworn affidavit from D.S. which states that on May 24, 2024 D.S. and her husband visited the rental property and noticed a person surveilling them from the second floor of one of the buildings. D.S. states that the Landlord told her that this made her feel uncomfortable.

Counsel entered into evidence a sworn affidavit from X.S.E. which states that on April 11, 2024 she visited the rental property and saw a man fully naked using the hot tub which was visible from the driveway. X.S.E. states that the Landlord told her that the Tenant's behaviour is making her really uncomfortable.

Counsel submitted that the Tenant has been surveilling his client when she attends at the rental property as shown by the Tenant's timeline which was entered into evidence by the Tenant. The Tenant's timeline is a series of handwritten notes documenting the Landlord's attendance at the rental property and communications with the Landlord since the Notice was served. The May 24, 2024 visit to the rental property outlined in D.S.'s affidavit is not noted in the timeline. The April 11, 2024 visit to the rental property outlined in X.S.E.'s affidavit is not outlined in the timeline.

Counsel submitted that the Tenant's surveillance made the Landlord feel uncomfortable. Counsel entered into evidence a text message from the Tenant to the Landlord in which the Tenant apologizes for his brother for speaking to her rudely.

The Tenant testified that he is never naked in the outdoor hot tub and always wears underwear and swim trunks when using it. The Tenant testified that there isn't an outdoor shower at the property, only the hot tub, which he installed with the Landlord's permission. The Tenant testified that the hot tub cannot be seen from the driveway. Photographs of the outdoor amenities were not entered into evidence.

The Tenant testified that after he was evicted from the main house, he observed that the Landlord was not moving in and began to keep the timeline for evidence for this proceeding. The Tenant testified that there is nothing wrong with that.

Counsel submitted that the Landlord was not comfortable moving into the rental property because the Tenant was suicidal. The Landlord entered into evidence a text message from the Tenant dated April 17, 2024 which states:

....Then you told me there's nothing to worry about and then put the house up for sale two weeks after saying there is nothing to worry about, causing me so much stress I had a nervous breakdown and tried to take my own life and ended up in the mental hospital for weeks....

Counsel submitted that the above text caused the Landlord considerable discomfort and she did not want to live on the same property as someone who would harm themselves.

The Tenant testified that his mental health episode had nothing to do with Landlord putting the property up for sale. The Tenant testified that he had depression and went to the hospital for treatment in April 2024. The Tenant testified that he is now on medication for depression. The Tenant testified that the Landlord had more than six months to move in before this incident and failed to do so.

Counsel submitted that the Tenant keeps ducks on the property, and they smell bad which is another reasons the Landlord does not want to move into the rental property.

The Tenant testified that he originally had 10 chickens at the rental property, with the Landlord's permission and later got ducks. The Tenant testified that the property sits on one acre. The Tenant testified that there is very little smell from the ducks as he cares for them daily and provides fresh bedding.

Counsel submitted that the Landlord didn't give permission for the Tenant to have chickens and then ducks but allowed it to happen because she didn't live at the property at the time.

Counsel submitted that the Landlord has provided proof of extenuating circumstances that prevented her from moving in.

## Analysis

### **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 six months' duration if the notice to end tenancy was issued on or before April 2, 2024, or 12 months' duration if the notice to end tenancy was issued on or after April 3, 2024.

Both parties agree that the Landlord did not move into the rental property.

Section 51(3) of the Act states that director may excuse the landlord from paying the 12 months' rent if extenuating circumstances prevented the landlord or close family member from moving in within a reasonable period after the effective date of the Notice and residing in the rental unit for at least 6 months.

Residential Tenancy Policy Guideline #50 states that extenuating circumstances are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

I find that the Landlord has not proved, on a balance of probabilities, that an extenuating circumstance prevented the Landlord from moving into the rental property within a reasonable time and residing in the rental property for 6 months.

I find that it was reasonable for the Tenant to track who was coming and going from the rental property as he was evicted from it for Landlord's use. It is clear that the Landlord did not follow through with the reasons to end the tenancy set out in the Notice. I find that in taking notes on who was coming and going from the rental property the Tenant was evidencing this claim, which is permissible. I find that the Tenant was within his rights to note who was coming and going from the rental property given the reason for his eviction. I find that the Tenant taking the time to evidence his claim is not an extenuating circumstance. I find that the Landlord should have anticipated that the Tenant would track whether or not she moved in after she evicted him for her own use.

The Tenant testified that he does not use the hot tub naked, the affidavit of X.S.E. states that she witnessed the Tenant using the hot tub naked. The Landlord bears the burden of proof. I find that other evidence has not clarified the issue. I find that the Landlord has not proved, on a balance of probabilities, that the Tenant used the hot tub naked.

I am satisfied that there is an outdoor hot tub which the Tenant uses. I note that male bathing suites are often a set of trunks without a shirt. I find that seeing a topless male in a hot tub is not an extenuating circumstance as set out in Residential Tenancy Policy Guideline #50. Based on the Tenant's undisputed testimony I find that he had permission to install and use the hot tub. I find, on a balance of probabilities, that this hot tub was present when the Notice was served. I find that the Landlord should reasonably have known that she might see a man in a swim suite using the hot tub. This is not an extenuating circumstance. I find that it would be inappropriate for a Landlord to allow the installation of a hot tub and then use the use of that hot tub as a reason to avoid the requirement of the Landlord to move in after service of the Notice.

It was undisputed by the parties that the Tenant suffered some mental health challenges in April of 2024. I find that these challenges occurred over 8 months after the Tenant was evicted. Residential Tenancy Branch Policy Guideline states that a reasonable amount of time to move in may be about 15 days. I find, on a balance of probabilities, that the Tenant's mental health challenges in April of 2024 had nothing to do with the Landlord's failure to move into the rental property within a reasonable period (approximately 15 days) after the Tenant moved out on August 1, 2023.

The parties had conflicting evidence regarding the smell of the ducks. The Landlord bears the burden of proof. I find that other evidence has not clarified the issue. I find that the Landlord has not proved that the ducks have a significant odor. Based on Counsel's submissions I find that the Landlord was aware of the presence of ducks when the Notice was served. Thus, even if there is a smell, the Landlord should reasonably have been aware of its possibility when the Notice was served. I find that this is not an extenuating circumstance.

I find that the Tenant's brother speaking rudely to the Landlord on one occasion is a minor issue and is not a valid reason for the Landlord to refuse to move in. I find that this does not qualify as an extenuating circumstance.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has established their claim for compensation related to a notice to end tenancy where the Landlord did not accomplish the stated purpose or comply with the Act.

Therefore, I find the Tenant is entitled to 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, in the amount of \$60,000.00.

## Conclusion

I grant the Tenant a Monetary Order in the amount of **\$60,000.00** under the following terms:

Monetary Issue	Granted Amount
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	\$60,000.00
<b>Total Amount</b>	<b>\$60,000.00</b>

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: August 22, 2024

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Residential Tenancy Branch