



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding REMAX MANAGMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to recover the filing fee for this application from the landlord;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to question one another. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of the hearing notice and evidence and both sides were prepared to deal with the matters of the application.

Issues to be Decided

- Are the tenants entitled to compensation pursuant to Sections 51 and 67 of the *Act*?
- Are the tenants entitled to recover the \$100 filing fee for this application from the landlord, pursuant to Section 72 of the *Act*?

Landlord's assertions during the hearing

I note that throughout the hearing the landlord challenged my authority to conduct the hearing. At the start of the hearing the landlord stated that the owner of the rental unit was on standby as a witness in case I, the arbitrator, wanted to hear from him. I advised

the landlord that it is his decision and not mine whether or not testimony from the owner should form part of the response to the tenants' claim.

The landlord stated that this is not normal because other arbitrators decide whether or not to call witnesses. Forty minutes into the hearing the landlord decided the owner should call in to the hearing to provide testimony; I warned the landlord that there was only twenty minutes left in the hearing and he needed to act quickly. The landlord then directed me to extend the duration of the hearing.

When the owner called in to the hearing, I asked him to affirm he would provide truthful testimony and then asked him to respond to the tenant's claim that he had not moved into the rental unit. I was interrupted by the landlord who advised the participants that by not questioning the owner privately I was again acting differently from other arbitrators.

The landlord referred to his 20 years of experience in dispute resolution. He claimed my reference to section 51 of the *Residential Tenancy Act* and questions about what steps were taken by the owner to move in showed I was biased in favour of the tenants. He stated that by referring to section 51 of the *Act* I was presenting evidence on behalf of the tenants.

I stated I am educating all participants about the section of the *Act* relevant to this dispute and my questions are to solicit the information I require to make a decision to resolve this dispute. When I reviewed with the participants the process by which they may challenge my decision once it is issued, the landlord again stated that I was biased and directed me to consider sections of the *Act* other than 51 (without naming any other sections) and directed me to rely on Policy Guideline #2 'Ending a Tenancy: Landlord's Use of Property.'

The landlord requested my full name and a copy of the recording of the hearing. I provided my full name and advised there is no recording of the hearing.

With reference to Residential Tenancy Policy Guideline 10 'Bias and Conflict of Interest' there is no substance to the landlord's allegation that I am biased in favour of the tenants.

Background and Evidence

The tenants were served a Two Month Notice to End tenancy for Landlord's Use of Property (herein referred to as 'Notice') on May 28, 2018, with an effective vacancy date of July 31, 2018, citing the rental unit will be occupied by the landlord or the landlord's

close family member. The tenants were paying \$2,000.00 per month for rent at the time the tenancy ended. The tenants did not dispute the Notice and vacated the rental unit prior to July 31, 2018. They received the equivalent of one month's rent as compensation from the landlord.

The landlord testified that the owner, who resides in the U.S.A., lost his job in March 2018 and directed the landlord in April 2018 to end the tenancy so that he, the owner, could move into the rental unit. The landlord testified that in March and/or April 2018 the owner was in the process of securing a new job in the city where the rental unit is located.

The tenant entered into evidence an email dated May 11, 2018 from the landlord to one of the tenants in which the landlord states the owner has lost his job and either needs to sell the rental unit or move in to it himself to finish the basement prior to selling. The tenant noted that in this email there is no reference to the landlord having a new job. The landlord submitted evidence of a May 16, 2018 offer for a job interview.

The tenant testified the May 11, 2018 email came after the landlord attempted to impose a "One time to market" rent increase of \$1,200.00 per month, which the tenants challenged as unreasonable and/or illegal. The landlord disputes this and claims the rental market would not allow for a cost of \$3,200.00 per month; he claims he would not and did not try to impose a \$1,200.00 rent increase on the tenants.

The owner testified he had been with the same company in the U.S.A. for nine years and he was let go in early March 2018. He said he decided to move back to the city where the rental unit is located and got some job leads. He got one interview for mid-May and the employer made a verbal offer to him in the last week of June 2018. The offer was rescinded when he and the employer did not agree on remuneration. I asked him if he had a job offer prior to when he asked the landlord to end the tenancy and he said no, he did not have any job offer until the end of June 2018. The landlord entered into evidence an email dated June 29, 2018 from the owner which says:

did not work out for me, they have rescinded the offer for me. So at this point I am not in position to move to Kelowna. Due to this unforeseen circumstances, I wish to rent the again. This way, I can carry out my obligation to pay mortgage for this house. [sic]

On this same date, June 29, 2018 the tenants vacated the unit. The landlord testified that the rental unit has been vacant since June 30, 2018.

I asked what steps were taken to accomplish the stated purpose for ending the tenancy after the tenants had vacated. The landlord testified the steps taken were the owner looking for employment in the city where the rental unit is located. The landlord emphasized repeatedly that the owner had the intention of finding a job and moving into the rental unit.

The landlord testified the owner lost seven months of rental revenue keeping the rental unit vacant specifically to avoid breaching the *Residential Tenancy Act*. The landlord testified there was a lack of profit motive to end the tenancy for any reason other than the owner moving in. He stated that he had spoken to staff at the Residential Tenancy Branch who advised him that if a unit was not re-rented in six months after the end of the tenancy, the landlord isn't required to pay the tenants additional compensation.

Both parties provided evidence and testimony related to when the rental unit was put on the market for sale and/or advertised for rent after the tenants vacated. The owner's email of June 29th states he wishes to put the rental unit back on the rental market. This is a month prior to the effective date of the Notice and the same date the tenants vacated the unit. The tenants provided undisputed evidence the rental unit was listed for sale on September 8, 2018 (date from screen shot of listing). The tenants testified the rental unit is now back on the rental market advertised at a rent higher than what they were paying.

The landlord testified the tenants moved out prior to the effective date of the Notice, July 31, 2018, and had they responded to his communications after the owner had the verbal job offer rescinded, they could have remained in the rental unit as they are excellent tenants.

The landlord emphasized that there was no ulterior motive in issuing the Notice and the owner has suffered financially due to not finding employment and having to keep the rental unit vacant. The landlord testified the tenants' application is frivolous.

Analysis

Please refer to sections 49, 50 and 51 in the *Act* for the legislative provisions related to ending a tenancy for landlord's use. BC Residential Tenancy Act

Section 49 provides the reasons a landlord in good faith may end a tenancy. In response to a tenant's application for dispute resolution to cancel a two-month notice to end tenancy for landlord's use, the arbitrator will consider whether the notice was issued in good faith when deciding whether to grant the landlord an order of possession.

The tenants in this matter have not applied to cancel the Notice; the landlord already has possession of the rental unit. The tenants have applied for compensation in addition to the equivalent of one month's rent they have already received because they believe, as stated in their submission, the landlord did not end their tenancy in good faith.

Section 51(2) sets out financial compensation for a tenant when a landlord does not take reasonable steps to accomplish the purpose for which the tenancy was ended or fails to use the rental unit for the purpose the notice was given after the effective date of the notice. Does it matter if the reason for ending the tenancy was given in good faith? The Residential Tenancy Branch's Guideline #50 'Compensation for Ending a Tenancy' provides guidance to arbitrators, landlords and tenants on compensation for ending a tenancy. PG 50

Guideline #50 does not make any reference to good faith. It is arguably very clear in this Guideline that the arbitrator must consider whether reasonable steps were taken to accomplish the purpose of ending of the tenancy, whether or not the reason for ending the tenancy was issued in good faith. Below is the key section of the Guideline:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

I must consider the landlord's intention because it relates to the purpose of ending the tenancy. As per sections 51(2) and 51(3), I must consider if reasonable steps were taken to accomplish the purpose of ending the tenancy after the effective date of the Notice and if extenuating circumstances prevented the accomplishment of this purpose.

What was the purpose of ending the tenancy? The landlord and owner both testified it was so the owner could move in, and moving in was linked to securing a job. In the May 11, 2018 email, the landlord says the owner "plans to come use the home as of August 1st" and lays out the chronology of events for the tenants, including issuing the Notice in late May. This email indicates the landlord's use of the rental unit relates to the owner

finishing the basement prior to listing the rental unit for sale and there is no mention of the owner's prospective employment.

The landlord and owner testified and presented evidence that the intention was for the owner to move in until a change in circumstances on June 29, 2018 prevented him from doing so. The landlord submits that because the owner intended in good faith to move in, and could not due to the extenuating circumstances of not receiving a job offer, the landlord should be excused from providing additional compensation to the tenants pursuant to section 51(3).

As the owner did not have an offer of employment when the Notice was issued and presented almost no evidence of a job search, the continued absence of a job offer after the Notice was issued cannot be considered an extenuating circumstance. The owner has not provided evidence of a change in his employment circumstances since losing his job in March 2018. I do not find that securing one job interview on May 16, 2018 is tantamount to the owner taking reasonable steps to relocate to a new city after the effective date of the Notice, July 31, 2018.

The landlord cannot rely on section 51(3) to avoid compensation due to extenuating circumstances related to employment because nothing has changed in the owner's employment circumstances since the Notice was issued. Furthermore, in writing on June 29, 2018 that he could not move to the city in which the rental unit is located and wants to re-rent, the owner has demonstrated he did not plan to take any steps after the effective date of the Notice to accomplish the purpose for ending the tenancy.

The landlord's testimony about advice he received from the Residential Tenancy Branch and his emphasis on maintaining the vacancy of the rental unit for six months after the effective date of the Notice suggests an alternative argument for why the tenants should not be compensated. The owner did not move in to the rental unit but he did *occupy* the rental unit in so far as he had possession of it, and he maintained it for no purpose other than to occupy it for at least six months after the tenancy ended. The landlord testified the tenants could have kept living in the rental unit had they not moved out prior to July 31, 2018.

The tenants exercised their right under section 50 to vacate earlier than the effective date on the landlord's notice. Section 50(3) states that giving this early notice does not affect the tenant's right to compensation under section 51.

The landlord directed me to consider the content of Policy Guideline #2 'Ending a Tenancy: Landlord's Use of Property.' PG 2 This Guideline clearly states occupying the unit means the landlord/owner (or close family member) *moves into* the rental unit:

The RTA allows a landlord to end a tenancy under section 49, if the landlord:

- Intends, in good faith, to move into the rental unit, or allow a close family member to **move into** the unit;

....

If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),

the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy.

The landlord advised the tenants on May 11, 2018 that if the owner did not move in, the rental unit would be sold. The owner said on June 29, 2018 he wanted to re-rent the unit. The rental unit was listed on the internet for sale on September 8, 2018, which is just over a month after the effective date of the Notice. Re-renting a unit is not a lawful reason to end a tenancy for landlord's use under section 49. Renovating a rental unit and selling a rental unit are both lawful reasons for ending a tenancy for landlord's use of property under section 49. Neither of these were selected as the reason to end the tenancy on the Notice.

If maintaining the vacancy of a rental unit is tantamount to the landlord or the landlord's close family member occupying the unit, any landlord who ends a tenancy using a reason in section 49 without good faith could avoid the set amount of additional compensation by keeping the rental unit vacant for six months. By acting this way, the landlord would incur a self-imposed loss of six months of rent instead of 12 months of rent provided for in section 51(2).

I interpret the landlord's testimony that he kept the rental unit vacant for six months to avoid breaching the *Act* indication of an attempt to avoid section 51(2) of the *Act*. This is contrary to section 5 of the *Act* which states

(1) Landlords and tenants may not avoid or contract out of this *Act* or the regulations.

(2) Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

I find that the purpose for ending the tenancy was for the owner to move in. I find the 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. I do not find extenuating circumstances prevented the owner from moving in. I also find that the rental unit was not used for the stated purpose on the Notice for at least six months' duration, beginning within a reasonable period after the effective date of the Notice. I do not find there were extenuating circumstances preventing the landlord from using the rental unit for the stated purpose.

As a result of these findings, the tenants are entitled to the set amount of additional compensation provided for in section 51(2) of the *Act*.

Conclusion

The tenants are successful in their application. I award them the equivalent of 12 times monthly rent of \$2,000 for a total award of \$24,000. I also award them the \$100 cost of filing this application.

The tenant is provided with an Order in the above terms and the landlord must be served with this Order as soon as possible.

Should the landlord 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 16, 2019

Residential Tenancy Branch