



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure and as necessary.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other. The tenant sent his hearing documents and evidence to each of the landlords via registered mail and the packages included digital devices. The landlords confirmed receipt of the tenant's registered mail packages; that they were able to access the digital content on the digital devices; and, that they were prepared to respond to the tenant's evidence. The landlords sent the tenant two registered mail packages containing their evidence for which the tenant confirmed receipt. I was satisfied both parties were in receipt of the other party's respective documents and evidence and I informed the parties that I would admit their documents and evidence and consider them in making my decision. Neither party had any objection to this.

I proceeded to explain the hearing process to the parties and permitted the parties to ask questions about the process. The tenant and the landlords were sworn in.

Issue(s) to be Decided

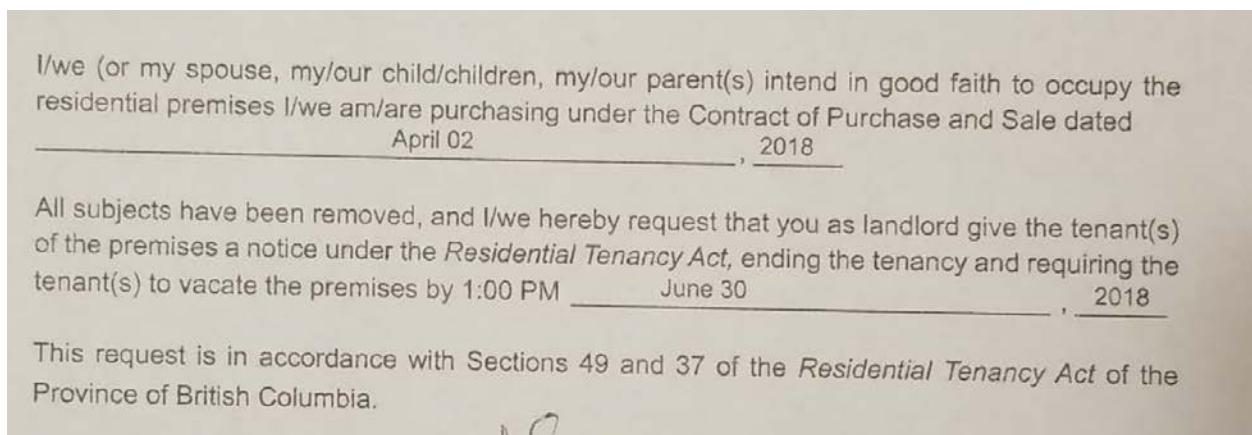
Has the tenant established that the landlord(s) did not use the rental unit for landlord's use within a reasonable amount of time after the tenancy ended and for at least six months? If so, is the tenant entitled to the compensation claimed against the landlords?

Background and Evidence

The tenant and the former owner of the property entered into a one year fixed term tenancy that commenced on March 1, 2016 and continued on a month to month basis upon expiry of the fixed term. The tenant paid a security deposit of \$600.00 and was required to pay rent of \$1,275.00 on the first day of every month.

On April 2, 2018 the former owner entered in to a contract to sell the property to the landlords named in this application (the landlords are referred to by initials AG, AL and DS in this decision).

The former owner was given a document dated April 18, 2018 entitled "Tenant occupied Property – Buyers Notice to Seller for Vacant Possession". The former owner gave the document to the tenant. The document contains the following statements:



I/we (or my spouse, my/our child/children, my/our parent(s)) intend in good faith to occupy the residential premises I/we am/are purchasing under the Contract of Purchase and Sale dated April 02, 2018

All subjects have been removed, and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 PM June 30, 2018

This request is in accordance with Sections 49 and 37 of the *Residential Tenancy Act* of the Province of British Columbia.

The above described document bears a signature and a witness signature next to DS's name.

The tenant accepted the tenancy would end at the end of June 2018 so that the new owner(s) may occupy the rental unit and proceeded to find new living accommodation. The tenant signed a new tenancy agreement for his new living accommodation on May 1, 2018 for a tenancy set to commence on June 1, 2018 for the monthly rate of \$1,700.00.

The parties provided consistent testimony that the tenant was provided two full months of advance notice to end the tenancy (May 2018 and June 2018) and the tenant withheld rent for June 2018 as compensation for receiving a notice to end tenancy for landlord's use of property.

Title to the property was transferred to the new owners effective May 30, 2018. The title of the property reflects the following ownership:

- DS owns a 90/100 interest in the property
- AG owns 5/100 interest in the property; and,
- AL owns 5/100 interest in the property.

The landlords submitted that DS and AL are the nephew and niece of AG.

The tenant was approached the landlord's representative and asked if he wanted to continue to rent the unit for a much higher rent. The tenant testified that the unit was offered to him at a rate of \$2,000.00 per month. The landlord's representative testified that it was offered to the tenant at the rate of \$1,800.00 per month. The tenant declined the offer.

The rental unit was posted on a popular internet site to advertise it for rent for \$2,000.00 per month starting July 1, 2018 and that showings of the unit would take place on June 10, 2018. The tenant provided copies of the internet posting as evidence. I heard consistent testimony that the rental unit was shown to people on June 10, 2018. The tenant submitted the people were prospective tenants. The landlord's representative claimed the people were just friends or co-workers of one of AG.

The landlord's representative subsequently informed the tenant that the rental unit had been rented and requested the tenant permit the new "tenants" to move in some of their possessions early. The tenant captured this telephone conversation on an audio recording that was included in his evidence package. The tenant was of the position this is further evidence the unit was re-rented to new tenants. The landlord's representative explained that he used the term "tenants" because that is how the three owners are identified on the title of the property: "tenants in common".

The tenant permitted the new "tenants" to move in some of their possessions in the latter part of June 2018. The tenant testified that three men moved some possessions into the rental unit in the later part of June 2018 and none of the men were the new owners. The landlord's representative submitted that one of the men was AL's fiancé and his co-workers who would be staying in the rental unit. I also heard that the utilities were the name of AL's fiancé for the month of July 2018.

The landlord's representative submitted that owner AL moved some of her personal possessions into the rental unit in early July 2018 and that she occupied and continues to occupy one of the two bedrooms approximately three days per week when she is not working in a different city. In addition, AL's brothers also sleep in the living room.

The landlord's representative submitted that owner AG occupies the other bedroom in the rental unit and that AG moved some of his personal possessions, such as clothing, into the rental unit in July 2018; heavier items were moved into the rental unit in August 2018; and, more of AG's possessions were moved in to the rental unit in October 2018. I heard that from August 2018 onwards the utilities were in AG's name.

The tenant also submitted that he saw what appeared to be AG moving some possessions into the rental unit on or about October 1, 2018.

The tenant suggested that AG moved into the rental unit in October 2018 only because he served the landlords with his Application for Dispute Resolution in September 2018. The tenant speculated that the landlords may have even ended the tenancy for the people that moved in after his tenancy ended. The landlord's representative denied that to be the case and claimed that the rental unit was never re-rented and that it has been occupied by AL and AG since the tenancy ended and continues to be occupied by them, plus AL's brothers.

The landlord's representative also submitted that owner DS owns his own condominium unit and that he has never occupied the rental unit after the tenancy ended. Further, DS's intention is to reside in his own condominium along with his new wife, when he marries. The tenant submitted that he picked up his security deposit refund cheque from AG and DS at DS's residence.

The landlord's representative explained that the property was offered for rent to the tenant and advertised for rent in an effort to obtain private lending to purchase the property. When I pointed out that the "open house" was held on June 10, 2018 which was after the property already transferred to the new owners the landlord's representative explained that the owners are exploring "all options" with a view to finding financing so that AL can be released from the title and mortgage obligations. The landlord's representative submitted that the rental unit is really intended for AG's use, as his residence along with his future wife; however, AG is waiting for money to come from his future wife's father before he can purchase it without the financial assistance of family. The landlord's representative explained that the landlords' culture is such that family members help family members and that DS and AL were trying to

help AG purchase a residence since he is disabled and does not have the financial resources to do it without their help.

The tenant remained of the position that the new owners re-rented the unit after his tenancy ended and he seeks compensation totalling \$21,485.32. This amount is the sum of: moving expenses; the increase in rent he pays for his new living accommodation over that of the rental unit; an amount equivalent to 12 months' worth of rent since the landlords did not use the rental unit for their own use; and, the filing fee. The tenant argued that he should be awarded compensation based on the legislation as it was amended on starting May 17, 2018 since the former legislation permitted compensation of only 2 months' rent which is so insignificant it merely amounts to a cost of doing business for landlords.

Analysis

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use of property. Where a property is the subject of an unconditional sales contract, the tenancy may be ended where:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(1) defines "purchaser" to be:

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

In this case, the document dated April 18, 2018 is consistent with section 49(5)(c)(i) and it appears to be signed by DS only which is also consistent with the Act since DS is the only purchaser who would hold at least a ½ interest in the rental unit. The tenant was given notice that the tenancy would end for landlord's use in April 2018 and acted upon that notice by finding new living accommodation as of May 1, 2018 and vacating the rental unit by June 30, 2018. Therefore, I am satisfied that the tenancy ended pursuant to section 49(5) of the Act based on a notice given in April 2018.

Where a tenancy ends under section 49 of the Act, a tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 underwent legislative changes effective on May 17, 2018. The legislative changes provide tenants with much greater compensation but also provide landlords an exemption where extenuating circumstances. The legislative changes were not made retroactive. The tenant seeks compensation pursuant to Section 51 as amended on May 17, 2018 as opposed to the legislation in effect prior to May 17, 2018. In this case, the landlord(s) gave a written document to the seller of the property to end the tenancy and the tenant accepted and acted upon that notice before the legislative changes of May 17, 2018 came into effect. As such, I find the compensation provisions in effect prior to the changes made on May 17, 2018 are applicable in this case and any reference I make to section 51 compensation from this point forward shall be as it was written prior to the changes of May 17, 2018.

Section 51 contained two separate provisions for compensation for tenants. First of which is compensation provided under section 51(1) that is payable to every tenant who receives a notice to end tenancy under section 49 of the Act. This compensation is equivalent to one month's rent and the tenant has received this compensation by withholding rent for his last month of tenancy, June 2018, as he was permitted to do under section 51(1.1).

Section 51(2) provides for further compensation to a tenant, in addition to compensation payable under section 51(1), where

(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined]

In this case, only DS meets the definition of a purchaser under section 49 of the Act since the other owners do not own at least a ½ interest in the property. DS issued the written request for the former owner to end the tenancy so that he, or his close family member, may occupy the rental unit. Accordingly, I find that the rental unit would have to be occupied by DS or a close family member of DS within a reasonable period of time after the tenancy ended and for at least six months in order to use the rental unit for the reason he said he would in ending the tenancy.

More than six months has passed since the tenancy ended and DS, or a close family member of DS, does not occupy the rental unit and I find that a reasonable amount of time has passed, especially when I consider there is no intention for DS or his close family member to occupy the rental unit. Rather, I heard from the landlords that DS has and intends to occupy own condominium residence while the rental unit will continue to be occupied by AG as AG's residence.

While the tenant was of the position the landlords were fraudulent in their submissions, it is not necessary that I determine whether the unit was re-rented to others, as submitted by the tenant, or occupied by AL and AG, as submitted by the landlords, after the tenancy ended since AL and AG do not meet the definition of "close family member" of DS.

Close family member is defined in section 49 of the Act as follows:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

Based on the definition of close family member, AL and AG would have to be a parent, spouse or child of DS, or the parent or child of DS's spouse, which they are not.

In light of all of the above, I find that the rental unit has not been occupied by DS or DS's close family member within a reasonable amount of time since the tenancy ended and I find the tenant is entitled to compensation payable under section 51(2) of the Act, as it was written at the time the tenant received and acted upon the notice to end tenancy. Therefore, I award the tenant two times the monthly rent of \$1,275.00, or \$2,550.00.

As for the tenant's request to recover moving costs and the rent differential, I dismiss those portions of the tenant's claims. Section 91 of the Act provides the common law respecting landlords and tenants applies except as modified or varied under this Act in British Columbia. The Act sets out a specific remedy for tenants where a landlord does not use the rental unit for the purpose stated for ending the tenancy which I have applied in this case. Accordingly, I do not give further consideration to the tenant's request for recovery of moving costs and rent differential.

Given the tenant's application had merit, I further award the tenant recovery of the \$100.00 filing fee paid for this application.

Since it was DS that was the "purchaser" who was in a position to end the tenancy, by having at least a ½ interest, and DS executed the document that requested the former owner give the tenant notice to end the tenancy, I hold DS responsible for compensating the tenant. As such, I provide a Monetary Order against DS only.

Provided to the tenant with this decision is a Monetary Order against DS in the total amount of \$2,650.00 to serve upon the landlord and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

Conclusion

The tenant has been provided a Monetary Order against owner DS in the sum of \$2,650.00.

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