



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that she served the landlord with a copy of this application for dispute resolution and her evidence via email on September 15, 2021. The landlord testified that she received the above documents on September 16, 2021. I find that the landlord was sufficiently served for the purposes of this *Act*, with the above documents, pursuant to section 71 of the *Act* because receipt was acknowledged.

Both parties agree that the landlord emailed the landlord's evidence to the tenant on March 5, 2021 and that they were received the same day. The landlord testified that the landlord served another copy of the same evidence to the tenant's mailbox on March 5,

2021. The tenant testified that she received it on March 6, 2021. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2008 with different landlords. This tenancy ended on April 30, 2021 in accordance with a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 11, 2021 (the "Notice"). Monthly rent in the amount of \$2,530.00 was payable on the first day of each month.

The landlord testified that the subjects for the purchase of the subject rental property were removed in November of 2020 and that she took possession of the subject rental property on February 1, 2021. The above testimony was not disputed by the tenant.

The landlord testified that she during the purchasing process, she instructed the seller to serve the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property; however, the seller failed to do so. The tenant testified that she was then required to serve the tenant with the Notice after she took possession. Both parties agree that the landlord personally served the tenant with the Notice on February 11, 2021. The Notice states that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant testified that she filed this application for dispute resolution, seeking 12 months' rent compensation under section 51 of the *Act* because one month after she was evicted from her home of 12 years, she saw that it was listed for sale for more than \$300,000.00 higher than it sold. The listing was entered into evidence. The tenant testified that it appeared that surface renovations were completed, and that the landlord intended on flipping the property.

The landlord testified that she always intended on moving into the subject rental property with her young children. The landlord testified that the failure of the seller to serve the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, was financially difficult because she was required to pay rent at the same time as paying the mortgage at the subject rental property because she was not able to move in right away.

The landlord testified that after the tenant moved out, she tried to insure the subject rental property but struggled to find an insurer who would insure the subject rental property because the wiring was knob and tube. The landlord testified that insurers wanted her to replace the wiring in the subject rental property. The landlord testified that she got quotes to replace the knob and tube wiring, but the quotes were in the range of \$20,000.00 which she could not afford.

The landlord testified that given the unexpected additional expense of replacing the wiring, she decided to relist the property for sale. The landlord testified that her insurance broker was later able to find an insurer who did not have the knob and tube removal requirement and the subject rental property was taken off the market in July of 2021. The landlord testified that before she and her family moved into the subject rental property, they updated the flooring, repaired leaking plumbing, and remediated a mold issue. The landlord entered into evidence photographs of the plumbing showing leaks and the removal of the flooring. The landlord testified that she and her family moved into the subject rental property at the end of July 2021.

The landlord entered into evidence an email from her insurance broker dated January 18, 2022 which states:

...[name of insurance company] asked for additional information about the dwelling. You responded to us with what you knew back then. In turn, we passed in the formation to [the insurance company].

Generally, if a dwelling that has knob and tube wiring, companies require them to be removed and upgraded to circuit breakers.

The insurance [at the subject rental property] is active...

The landlord entered into evidence another email from her insurance broker dated January 20, 2022 which states:

As previously advised, if your dwelling has knob and tube wiring, the insurance company may not insure the risk until the knob and tube wiring's removed and replaced with circuit breakers.

Per your enquiry, your policy was amended to owner occupied back on August 05th, 2021.

The landlord testified that she is currently living in the subject rental property.

The tenant testified that the landlord did not complete a home inspection prior to evicting her and that the property was 95 years old. This testimony was not disputed by the landlord. The tenant testified that the listing of the property for sale shows that the landlord was not acting in good faith at the time of the eviction. The tenant testified that she's "sure they are living [at the subject rental property] now", but that they did not act in good faith in serving the Notice.

The landlord entered into evidence a Canada Post mail forwarding confirmation, sending mail to the subject rental property from August 13, 2021 to December 12, 2021. The landlord entered into evidence a receipt from a moving company dated July 30, 2021 which states the address the landlord moved to was that of the subject rental property.

Analysis

Based on the testimony of both parties I find that the tenant was personally served with the Notice on February 11, 2021, in accordance with section 88 of the *Act*.

Section 49(4) of the *Act* states:

A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The tenant made submissions regarding the good faith intention of the landlord when the Notice was issued. The good faith requirement is found in section 49(4) of the Act as seen above.

Residential Tenancy Policy Guideline 2A states in part:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

Good faith usually comes into play if a tenant is seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, which is not the case in this dispute. This dispute is centered around section 51 of the *Act* which does not contain a "good faith" requirement. Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b)the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion,

extenuating circumstances prevented the landlord or the purchaser, as applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis added]

I find that a lack of good faith in the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property does not impact a section 51 claim. A section 51 claim turns on if:

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline # 50 (PG #50) states:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.

For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

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.

Based on the testimony of both parties, I find that the tenancy ended on April 30, 2021. Based on the emails from the landlord's broker, I accept the landlord's testimony that it was difficult to find home insurance for the subject rental property because it had knob and tube wiring, and that this led to a delay on moving in and the property briefly being listed for sale. Based on the moving invoice I find that the landlord moved into the subject rental property on July 31, 2021, approximately three months after the tenancy ended. Based on the photographs entered into evidence, I find that plumbing repairs were required at the subject rental property. I find that it was reasonable for the landlord to address the plumbing repairs, and any mold issues stemming from the leaking plumbing prior to moving in. I find it reasonable that the landlord replaced old flooring prior to moving in.

PG #50 states that a reasonable period of time for the landlord to move into the subject rental property is usually short, and provides an example of 15 days; however, it also states that a reasonable period of time is as soon as the circumstances permit and that a somewhat longer period may be reasonable. I find that given the unexpected trouble in insuring the subject rental property and the repairs required at the subject rental

property, it was reasonable for the landlord to move in three months after the tenant moved out. I find that the circumstances of this case warranted a longer move in period than the 15 days exemplified in PG #50.

The ill section 51 of the *Act* is aimed at preventing a landlord evicting a tenant under the guise of a family member moving in and then the landlord not following through with the reason for ending the tenancy and using the subject rental property for another purpose. As I have found that the landlord moved in, this ill did not occur.

Based on the January 18, 2022 email which states that the landlord's insurance on the subject rental property is still active and based on the landlord's testimony, I find that the landlord currently resides at the subject rental property, and has resided at the property since July 31, 2021 for a total occupancy of over six months.

I find that since the landlord moved into the subject rental property within a reasonable time from the end of the tenancy and has resided at the subject rental property for more than six months from the date she moved in, the tenant is not entitled to section 51 compensation. The tenant's application for dispute resolution is dismissed without leave to reapply.

Since the tenant's application for dispute resolution was unsuccessful, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for dispute resolution 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 *Residential Tenancy Act*.

Dated: March 16, 2022

Residential Tenancy Branch