



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenant, her legal representative, the landlord and the landlord's legal counsel attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The monthly rent at the end of the tenancy was \$1,400. A written tenancy agreement was filed in evidence showing a tenancy start date of February 1, 2020, with the original landlord. However, the tenant submitted she moved into the rental unit in 2016 and vacated the rental unit on October 30, 2021.

The tenant occupied the lower unit of the residential property and another tenant occupied another unit of the residential property.

The tenant's monetary claim is \$25,000. From the description, part of the monetary claim is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice, as it has not been used for the stated purpose listed on the Notice.

The tenant wrote in her application the following:

I want compensation because the landlord has not used the rental unit for the stated purpose for at least 6 months within a reasonable period of time. Therefore, this amount will cover 12 months of rent for my troubles. In addition for the emotional distress I had to endure for 4 months being told I was being evicted and not being able to find a home in Kelowna that was affordable for myself as a new graduate trying to find a job. I had to leave the city to find an affordable home.

[Reproduced as written except]

The Notice received from the landlord was dated September 10, 2021, listing an effective date of December 31, 2021.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse. A copy of the Notice was filed in evidence.

The tenant's application is partially based upon her assertion that the rental unit was not used for the stated purpose.

In response to the tenant's claim, the landlord proceeded first in the hearing.

The landlord took ownership of the rental unit on July 1, 2021, after purchasing it from the original landlord.

The landlord and counsel submitted that the landlord met with the tenant and the tenant in the upper rental unit after taking ownership in early July 2021, and on July 10, 2021, the landlord inspected the residential property. At that time, the landlord submitted that he informed the tenants he was thinking about moving into the residential property.

Counsel submitted that it was the tenant who asked for a 2 Month Notice for her employment purposes and then the Notice was issued.

Counsel confirmed that the 2 Month Notice was mistakenly issued.

The landlord submitted that he mistakenly sent the 2 Month Notice, but that he later told the tenant he was not moving in. The landlord said that he informed the tenant she could stay in the rental unit, but instead, he received a text message from the tenant informing him she was vacating the rental unit.

The landlord's position is that the tenant ended the tenancy as she made the decision to move out.

The landlord's position is also that the tenant entrapped him and tricked him into serving a 2 Month Notice as she asked for the Notice.

The landlord confirmed that when he purchased the residential property, his original intention was to move in, but he did eventually inform the tenants he was not moving in.

The landlord said that the 2 Month Notice form he used was the first form he found when doing a Google search, but he made a mistake as it was not his intent to move in.

The landlord filed an unsigned letter said to be from a tenant living in a rental unit since November 15, 2019. The address for this tenant was the same and also different than the rental unit address. This letter writer said the landlord came to view the property in

person in early July 2021 and they were advised that he was thinking of moving his family into the property for January 2022. In September, the landlord called to say he had no plans to move to the city and their tenancy could continue. According to the letter writer, the tenant, in September 2021, said she was thinking about moving and possibly with her brother. The landlord also filed text message chains between the landlord and the tenant and between the landlord and the other tenant.

The landlord did not dispute that he has not moved into the rental unit.

Tenant's response –

In response, the tenant provided a written statement, reading, in part, as follows:

1. *On July 10, 2021, the Landlord issued a verbal eviction to the Tenant. The Landlord was visiting the property for the first time with his fiancée. During the visit, the Landlord informed the Tenant that he planned to move in with his fiancée, and the Tenant should move out by December 31, 2021. The Landlord inspected both the inside and the outside yard of the house and made remarks about how great this place would be for him and his family.*
2. *After the initial verbal notice, the Tenant asked the Landlord to issue a written notice to end tenancy. She had to ask for the Written Notice 2 times over the course of 4 days through text messages.*
3. *On September 10, 2021, the Landlord emailed the “2 Months Notice to End Tenancy”. The Landlord selected “The landlord or the landlord’s spouse” will occupy the unit. The date to move out is indicated as December 31, 2021. This form is attached as **Evidence “Copy of notice to end tenancy”**.*
4. *On the same day, the Tenant received a call from the Landlord, informing her that the Landlord’s cousin wasn’t going to move into the property. The Landlord explained that his cousin is no longer going to attend the school in that area. The Landlord told the Tenant that she can stay in the property if she wished. The Tenant replied she will think about it.*
5. *After the call, there was no withdrawal of the 2 Months Notice, nor did the Landlord give the Tenant a new lease to sign.*

6. *On September 30, 2021, the Tenant messaged the Landlord indicating that she will move out at the end of October. See **Evidence “Text with (“landlord first name”), page 1.***
7. *On October 17, 2021, the Tenant asked the Landlord if he will be “renting out [Tenant’s] place after [Tenant] move[s] out”. The Landlord replied “[he is] planning on renting it”. The Landlord indicated that the rent for the Tenant’s unit has “gone up”. See **Evidence “Text with (“landlord first name”), page 3.***
8. *On October 30, 2021, the Tenant moved out of the unit.*
9. *To the Tenant’s knowledge, the party residing upstairs, “(upstairs tenant first name)”, was also issued a verbal notice to end tenancy in the summer of 2021 with reasons being that the Landlord wanted to move in. “(upstairs tenant first name)” moved out on November 30, 2021. On December 10, 2021, “(upstairs tenant first name)” went back to the property to retrieve mail, he saw tenants residing in the property. He did not believe the Landlord resided in the unit. See **Evidence “Neighbor Witness Statement”.***

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant’s legal representative submitted that when the landlord, who had just purchased the property, visited on July 7, 2021, the tenant was verbally evicted. Having just graduated, the tenant, who lived there for 6 years, began looking for another place to live. The representative took the landlord at his word that he would be moving in, but between July 7 and September 10, 2021, there was no communication with the landlord. The tenant, however, began active searches to find another place to live, based on the landlord’s verbal eviction. The market rent had increased substantially.

The tenant filed text messages with the same letter writer as the landlord’s letter writer, who confirmed with the tenant that the landlord never moved into the rental unit and someone else moved in.

The tenant filed a signed letter from the tenant living upstairs during her tenancy, who stated, in part, he received an eviction notice by the Landlord, (*landlord name*) in the summer of 2021, indicating that the landlord wanted to move into the rental unit. This tenant said he moved out on November 30, 2021, and on December 10, 2021, when

returning to the residential property to check for mail, saw there were other people living in the property.

Analysis

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

Section 51(2) provides that if 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, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the landlord or spouse have not occupied the rental unit since the effective date of the Notice of December 31, 2021, and the rental unit has been re-rented to other tenants, I find the landlord must pay the tenant the amount of \$16,800, the equivalent of 12 times the monthly rent of \$1,400.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Tenancy Policy Guideline 50E outlines 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.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In these circumstances, I find the landlord submitted insufficient evidence to show extenuating circumstances.

While the landlord claims that they issued the 2 Month Notice by mistake, I find the landlord is held accountable for the Notice served to the tenant, which led to the tenant vacating the rental unit, according to the Act and Policy Guideline.

At any rate, I do not accept that the landlord issued the tenant the wrong Notice to end the tenancy, as he never said what notice he would have issued in its place, such as a Notice for cause, unpaid rent or others. The landlord indicated he was contemplating moving into the rental unit, which I find to be the only Notice to end a tenancy appropriate for this circumstance.

Despite the landlord later informing the tenant he decided not to move into the rental unit, if true, Tenancy Policy Guideline 11 states that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

Further, I do not accept the tenant “tricked” or “entrapped” the landlord into serving a 2 Month Notice to the tenant. The landlord had the choice to serve a Notice or not serve a Notice to the tenant, and in this case, the landlord chose to issue a 2 Month Notice. It was not explained how a tenant can force a landlord to sign a document ending a tenancy and force service to the tenant, indicating the reason as the one given verbally to the tenant in July 2021. I therefore find insufficient evidence of this allegation, and apart from that, I do not find it meets the requirement of extenuating circumstances.

For the above reasons, I therefore find the tenant is entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

I further find I do not have to consider extenuating circumstances in this matter, to excuse the landlord from paying this amount, as I have found the landlord was not tricked or entrapped into serving the tenant a 2 Month Notice.

As a result, I grant the tenant a monetary award of \$16,800 as requested, which is the equivalent of monthly rent of \$1,400 for 12 months.

I find merit with the tenant's application and award her recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of \$16,900, the equivalent of monthly rent of \$1,400 for 12 months, or \$16,800, and the cost of the filing fee of \$100.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Additional finding -

The tenant's monetary claim totalled \$25,000. The amount of \$16,800, for 12 month's rent has been granted. However, the additional \$8,200, said to be for emotional distress was not supported by the evidence presented and not sufficiently set out separately from the claim for 12 months compensation. I dismiss this part of the tenant's claim, without leave to reapply.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$16,800 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$16,900.

The tenant's additional claim of \$8,200 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 07, 2022

Residential Tenancy Branch