Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT MNETC FFT

Introduction

The applicants seek $30,011.81 in compensation against the respondent (a "purchaser" as defined in section 49(1) of the *Residential Tenancy Act)* pursuant to sections 51(2), 67, and 72(1) of the *Residential Tenancy Act* (the "Act").

A hearing was convened and one of the applicants, the respondent, and a witness attended. The parties were affirmed, and no service issues were raised by either side.

Issues

1. Are the applicants entitled to compensation under section 67 of the Act?
2. Are the applicants entitled to compensation under section 51(2) of the Act?
3. Are the applicants entitled to recover the filing fee cost under section 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in August 2020 and ended on October 31, 2021. The applicants (also referred to as the "tenants" in this Decision) paid $2,300.00 in monthly rent. A copy of the tenancy agreement was in evidence and was not disputed by the parties.

Near the end of July 2021, the tenants' landlord—a property management company—served a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") upon the tenants by email. A copy of the Notice was in evidence and the tenant testified that, as stated on page two of the Notice, it was his understanding that the tenancy was being ended so that the purchaser or a close family member of the purchaser would occupy the rental unit.

During a showing of the property and before the sale of the property closed, the tenants believed that the purchaser might be letting them and other tenants in the property remain after the sale. However, they found out a few weeks later that the purchaser had changed their mind and had decided to move into the property. This was all before the Notice was issued. Eventually, the Notice was issued, it was not disputed by the tenants, and the tenants vacated the property at the end of October 2021.

Upon returning to the rental unit a short while later, ostensibly to retrieve their mail, the tenants did not see any evidence of anyone moving into and occupying the property. They drove through and visited the area a few times in the following months and again saw “no sign of activity” in the house. This observation reinforced the applicants’ idea or belief that nobody had ever moved in.

In respect of the applicants’ claim for $2,211.81 in compensation under section 67 of the Act, the tenant testified that they considered moving and storage costs that would not have been incurred had they been able to move out of the rental unit on their own terms. The applicants were unable to find a comparable rental during their search for a new home and they were forced to store many of their possessions in a storage unit. They had not needed such a storage unit while they were at the rental unit. In short, the tenant argued that the eviction put them in a position of having to relocate “unwillingly.”

Copies of receipts for the moving and storage locker expenses were submitted into evidence and referenced on the Monetary Order Worksheet.

The applicants further seek $27,700.00 under section 51(2) of the Act. They submit, as per the particulars in their application, that

> The Purchaser did not establish that they nor their family members permanently dwell at [address of rental unit], the stated purpose for ending the tenancy. [...] Purchaser sister occasionally visited [address of rental unit] to check mail after move out. As of Feb 25, 2022, there was no visible evidence of permanent occupation. No parked vehicles. No lights. Blinds constantly closed. No garbage/recycling out on collection day.

The purchaser respondent and their witness (the purchaser’s daughter) testified that they contacted a realtor in early July 2021 and had but the briefest of timeline—July 11-13—to inspect the property. They made an offer on July 13 and in which they required vacant possession. They were not interested in purchasing the property as an investment property, they stressed.

The purchaser gave evidence that from the possession date of November 1, 2021 they began preparations to have renovations done on the property. The yard also needed attention. But it was during the pandemic and late in the year and it was hard to find contractors to come to obtain a quote or conduct an evaluation of the property.

After November 1, the purchaser's witness testified, they found out additional issues with the property such as a leaking washroom in the rental unit. They also determined (as some point) that the various rental units in the house were "illegal" or unauthorized. The purchaser gave evidence that while the downstairs rental unit needed renovation work done, the upstairs rental unit in which the applicants had lived was "okay." In any event, the purchaser's daughter continued to look for people in January and February 2022 to do the work, and she finally found a contractor in February 2022. The work then took a number of months to finish. Eventually, the purchaser's daughter's brother moved into the rental unit at the end of July 2022.

The purchaser testified that for various reasons, including that of a gas leak (discovered after the possession date), that renovations needed to be done, and that the rental unit was an unauthorized or illegal suite, they ultimately decided not to have tenants.

During cross-examination by the applicant the purchaser confirmed that the property is currently occupied by himself, his spouse, and their children. The purchaser's witness also added that "considering all of the [renovation] work that had to be done" it would not be suitable for the tenants to have to remain in their rental units.

The applicant asked the purchaser whether they did in fact have a few opportunities to view the property before purchasing it. In response, the purchaser's witness testified "no," and that because the purchaser's father is blind, they needed an opportunity to properly view the property when it was "bright outside." Further, because the housing market was "hot" and a potential sale needed to be executed quickly they only had a few brief opportunities to view the property. They did not fully or "properly" assess the property until sometime in November.

Last, the purchaser argued that they could not have started obtaining a quote or doing any planning on the renovations earlier because they did not have possession of the property until November 1; they did not have a home to show a potential contractor. And once they did have the home then everyone was "too busy" to come any earlier. The applicant argued that it is the responsibility of a purchaser to arrange for contractors and that the time in this case was beyond what he would say is a "reasonable period."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for compensation under sections 7 and 67 of the Act

The first part of the applicants' claim is for compensation related to moving and storage.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

Here, while the purchaser may have not accomplished the purpose for ending the tenancy as stated in the Notice within a reasonable period, the Notice itself *was* issued in compliance with section 49(5) of the Act. Up until the stated end date of the vacancy, and for a reasonable period after that date, the Notice—and thus the eviction itself—was, in fact, valid. I therefore find no breach of the Act which might give rise to compensation. Further, the applicants did not dispute the Notice, which must also result in a finding of law and fact that the notice to end the tenancy was issued in compliance with the Act. Given this finding, the remaining three parts of the above-noted test need not be addressed. Whether the applicants are entitled to compensation for what happened *after* the effective end of tenancy date is, of course, the issue dealt with in the second part of the tenants' application.

For these reasons I must respectfully dismiss this aspect of the applicants' application, without leave to reapply.

2. Claim for compensation under section 51(2) of the Act

Section 51(2) of the Act reads as follows:

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

In this application, it is the purchaser who asked the landlord to give the *Two Month Notice to End Tenancy for Landlord's Use of Property* to the tenants. The Notice stated on page two that the purpose for ending the tenancy was so the purchaser or their close family member would occupy the rental unit.

Based on the evidence, it is my finding that the purchaser has not established that the state purpose for ending the tenancy—so that they or a close family member could occupy the rental unit—was accomplished within a reasonable period after October 31, 2021.

While the purchaser and his witness testified at length about the difficulty in finding contractors to undertake renovation work throughout the property, they have not established that the rental unit was in fact uninhabitable. Indeed, they briefly referred to the rental unit (the "upstairs suite") as being "okay." And though the rental unit may have required renovations and some repairs, including the issue with a leaking bathroom, there is no evidence before me to find that the purchaser or a close family member of the purchaser could not have occupied the rental unit within weeks, if not days, of the tenants' departure. Rather, the property basically sat unoccupied for a period of almost nine months. There is, to reiterate, no evidence to persuade me to find that the purchaser could not have occupied the rental unit in a vastly shorter, more reasonable period of time. Nine months was not, I find, a reasonable period after the effective date of the Notice in which to accomplish the stated purpose for ending the tenancy.

I must, however, turn now to section 52(3) of the Act which states that

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

There is, quite frankly, no evidence before me to find that any extenuating circumstance prevented the purchaser from accomplishing the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice.

While the purchaser experienced difficulty in obtaining the services of contractors to carry out renovations or repairs, as I have noted previously, those renovations and repairs did not and ought not to have been a barrier to occupancy. It was the purchaser’s decision to carry out renovation work, and the delays and so forth in hiring tradespersons is not by any stretch something that is unforeseen or unknown to the purchaser.

In summary, in taking into consideration all of the oral and documentary evidence before me, it is my finding that the purchaser has not established the existence of any extenuating circumstances that might excuse them from paying the applicants compensation under section 51(2) of the Act.

Thus, pursuant to section 51(2) of the Act, the purchaser (the respondent) must pay the tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement which in this case is $27,700.00.

3. Claim for recovery of application filing fee

Pursuant to section 72(1) of the Act the respondent is ordered to pay to the applicants $100.00 for the cost of the applicants’ filing fee.

Conclusion

For the reasons set out above the application is hereby GRANTED, in part.

A monetary order for $27,800.00 is issued with this Decision to the applicants.

The applicants must serve a copy of the monetary order upon the respondent. The applicants may, if necessary, enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: November 4, 2022

Residential Tenancy Branch