



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 tenants' application, filed on May 4, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$8,530.80 total, for 12 months' rent compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the two tenants, tenant BM ("tenant") and "tenant JL," and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. The two tenants and their advocate disconnected from the hearing from 1:32 p.m. to 1:34 p.m. I did not discuss any evidence in the absence of the tenants and their advocate. This hearing ended at 2:23 p.m. This hearing lasted approximately 53 minutes total.

All hearing participants provided their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she owns the rental unit. She provided the rental unit address.

The tenants confirmed that their advocate had permission to speak on their behalf at this hearing. The tenant identified himself as the primary speaker for the tenants at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities to settle at the beginning and end of this hearing but declined to do so. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application.

I cautioned the tenants that if I dismissed their application without leave to reapply, they would receive \$0 from the landlord. The tenants affirmed that they were prepared for the above consequences if that was my decision.

I cautioned the landlord that if I granted the tenants’ full application, the landlord would be required to pay the tenants the full amount of their monetary claim of \$8,630.80 total. The landlord affirmed that she was prepared for the above consequences if that was my decision.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. The tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants’ application and both tenants were duly served with the landlord’s evidence.

The landlord testified that she served the tenants with the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property, dated August 27, 2021 (“2 Month Notice”) on the same date, by way of posting to the tenants’ door. The tenant confirmed receipt of the 2 Month Notice, by way of posting to the tenants’ door. He said that it might have been on August 27, 2021, but he could not recall the exact date. In accordance with

section 88 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2012, with the former landlord. A written tenancy agreement was signed by the tenants and the former landlord only. The landlord purchased the rental unit and assumed this tenancy in January 2020. No new tenancy agreement was signed between the landlord and the tenants. This tenancy ended on October 31, 2021. Monthly rent of \$710.90 was payable on the first day of each month. A security deposit of \$312.50 was paid by the tenants to the former landlord. The landlord returned the full security deposit to the tenants, from her own money, since the former landlord did not transfer the original security deposit to the landlord, when she purchased the rental unit.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice was October 31, 2021. The reason indicated on the 2 Month Notice was:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The tenant confirmed that the tenants seek compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$710.90, totaling \$8,530.80. The tenant stated that because the landlord did not use the rental unit for the purpose on the 2

Month Notice, the tenants are entitled to compensation. The landlord confirmed that she disputes the tenants' application.

The tenant testified regarding the following facts. The tenants received an eviction notice, which gave them 60 days to move out. The landlord was supposed to move in, as per the notice to end tenancy. After 14 months, the landlord has not moved into the rental unit, as stated. There were three different tenants living in the rental unit in the last 14 months. The tenants were evicted and went through hard times and are paying \$1,300.00 more now, to live in their new place. There was nowhere to rent around town and even generally in Canada. The tenants had too much stuff and could not live in a small apartment.

The landlord testified regarding the following facts. In May, June, and July 2021, the landlord and her spouse were having a hard time. They had to fold their business and sell their tugboat. They decided that they needed to live separately. The landlord reluctantly gave notice to the tenants on August 27, 2021. She told the tenants that they could have an extra month to find a place if they needed, because of the lack of rentals. The tenants found a new place quickly and she was surprised by that. She went to stay at the rental unit and her spouse stayed at their marital apartment, where they were previously residing together. For five years, they had personal issues and were having a hard time. It was expensive to live separately and hard on their relationship but there was nowhere else to live and it was difficult financially. The landlord provided documents and affidavits with her evidence. Her spouse found a job out of town in September 2021 and in November 2021, he was away for 2 to 3 weeks at a time. During the time when he was away, the marital apartment was empty, so she stayed there alone. She could not be with her spouse and needed somewhere to stay. She slept at the rental unit, when her spouse came home from work, and he stayed in the marital apartment.

The landlord stated the following facts. Her spouse kept his job out of town for a few months, so the landlord re-rented the rental unit to a girl who needed a place to stay, and the landlord kept the second bedroom for herself, if needed. It was the landlord's full intention, in good faith, to move into the rental unit. She has been a landlord for 15 years and has never evicted anyone for any reason, as she has always had long-term tenants. She found this to be a stressful and isolated incident. She tried to call the tenants in February 2022, because she heard they were looking into the rental unit, but the tenants did not respond to her. There are four witnesses close to the landlord, who provided notarized affidavits, which were submitted by the landlord as evidence. The affidavits are from LG, JL, JZ and FG. She provided text messages as evidence, giving

notice to move into the rental unit. She provided an affidavit from her mother, JZ, which who she is not close with. She provided an affidavit from her spouse, FG.

The tenant's advocate stated the following facts in response. In the tenants' evidence package at exhibit B, the tenants provided a timeline of events. Another tenant, J, moved into the rental unit with her roommate for \$1,400.00 per month in rent, which is more than the tenants paid. In exhibit C, the tenants provided photographs of the landlord and her spouse on a 2-month RV road trip. If the landlord and her spouse were separated during this time, and struggling financially, they would not go on this trip together. The landlord did not move into the rental unit and she received twice the amount of rent, that the tenants were paying at the rental unit, during their tenancy. There have been 3 separate new tenants living in the rental unit since the tenants moved out. The landlord's relationship trouble in the summer, is not a reason to evict the tenants. The building is a 4-plex and 3 units were given eviction notices, once it was bought by the landlord.

The landlord stated the following in response. She agrees that she took a trip with her spouse, but this was planned and paid for 8 months prior. They still had problems. Her spouse had mental health struggles. She needed a place to stay. A new tenant, J, moved into the rental unit in December 2022, not with a roommate. Her boyfriend moved in as a roommate, 1.5 months later. They did not sign a lease. The landlord evicted 1 other person because they were violent, and the police were called. This was an isolated incident. It was the landlord's intent to move into the rental unit because her life was turned upside down. She is a female and needed a safe place. She did not take this decision lightly. She had a great relationship with the tenants before.

The landlord stated the following facts in response to my questions. She slept over at the rental unit but did not move in her items. She stayed at the rental unit sporadically November 7 and 8, 2021. She stayed at the rental unit again for 3 nights, two weeks later. She knew the new tenant J, who moved into the rental unit on December 8, 2021 for 3 months and no tenancy agreement was signed. The second bedroom was left empty for the landlord to sleep there, but she did not stay there. The new tenant J began paying \$700.00 for the first month and then her boyfriend moved in, so they began paying \$1,400.00 per month in rent. After tenant J left, there was a new girl from out of town, who needed a place to stay, so she moved into the rental unit in February 2022, for 1.5 months and paid \$1,200.00 per month in rent for herself, her boyfriend, and her kid. There was no tenancy agreement signed, as that was a month-to-month agreement. After the last new tenant moved out, three new tenants moved in with a few pets, and signed a tenancy agreement as of April 1, 2022, for \$1,400.00 per month in

rent. This tenancy is still ongoing to the present date. From January to February 2022, the landlord took a trip with her spouse. They reconciled but it was not a nice trip because they fought and argued the whole time, and only part of the time was nice and they had a discussion. The landlord's spouse moved back into the marital apartment, where the landlord resides. The landlord's spouse still works out of town, and they have semi-reconciled. The landlord felt bad for evicting the tenants and acted in good faith. This was not about the rent. She needed a place to stay. She gave extra time to the tenants to move, if needed.

The tenant's advocate stated the following facts in response. 3 units in the same complex, including the tenants' rental unit, were evicted from the property. The rental unit was empty and there was no furniture, and nothing left there. This was from November until the new tenants, J, moved in December 2021.

The landlord stated the following facts in response. The tenants did not look through the windows of the rental unit everyday, to see whether the landlord had furniture there, so that is not true. The landlord had a "foamie" on the bedroom floor and slept there with her dog, at the rental unit. The tenants cannot see the side or hang off the side of the building, where the landlord's bedroom was located at the rental unit.

Analysis

Credibility

I found the tenant and the tenants' advocate to be more credible witnesses than the landlord. They provided their evidence in a straightforward, calm, clear, convincing, credible, and consistent manner. Their testimony did not change throughout this hearing, based on the questions asked or the information provided.

Conversely, I found the landlord's testimony to be less credible, as compared to the tenant and the tenants' advocate. The landlord's testimony was provided in an unclear and inconsistent manner. Her testimony frequently changed throughout this hearing, based on the information provided and the questions asked.

Burden of Proof

The tenants, as the applicants, are required to present their application and evidence.

The landlord has the burden of proof, on a balance of probabilities, to prove that she used the rental unit for the reason indicated on the 2 Month Notice, issued to the tenants. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of her claims.

The landlord confirmed receipt of the tenants' application package, which includes a four-page document from the RTB entitled "Notice of Dispute Resolution Proceeding" ("NODRP"). The NODRP contains the phone number and access code to call into the hearing, and states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. I informed both parties that I had 30 days to issue a written decision after this hearing.

The landlord received a detailed application package, including the NODRP documents, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of the reasons on the 2 Month Notice, since she chose to issue it to the tenants on her own accord.

The following RTB *Rules of Procedure* are applicable and state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord failed to properly review and explain her claims and the documents she submitted in support of same.

This hearing lasted 53 minutes, so the landlord had ample time and multiple opportunities to present her submissions, evidence, and responses. During this hearing, I repeatedly asked the landlord if she had any other submissions and evidence to present, and if she had any responses to the tenants' submissions and evidence.

Findings

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (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
(a) 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

(b) 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.

(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 the case may be, from

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

(b) 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.

It is undisputed that the tenants vacated the rental unit on October 31, 2021, pursuant to the 2 Month Notice. It is undisputed that neither the landlord, nor her close family members, occupied the rental unit, after the tenants vacated. It is undisputed that the landlord issued the 2 Month Notice for the landlord, who is an owner of the rental unit, and qualifies under the notice, to occupy the rental unit.

It is undisputed that the landlord did not occupy the rental unit. The landlord provided affirmed testimony, stating that she did not move into the rental unit after the tenants vacated. While the landlord testified that she slept at the rental unit for 5 nights, she agreed that she did not move any of her furniture there, and her stay was temporary. The landlord did not occupy the rental unit for at least 6 months after the tenants vacated, as required.

Accordingly, I find that neither the landlord, nor any close family members of the landlord (parent, spouse or child or parent or child of that individual's spouse), occupied the rental unit after the tenants vacated on October 31, 2021, for at least 6 months, as required by the 2 Month Notice and section 51 of the *Act*.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be

unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

Residential Tenancy Act

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished 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.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I am required to consider the landlord's extenuating circumstances, if any, as per section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing. I raised the above issue to both parties during this hearing.

I find that the landlord failed to show extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice, as per section 51 of the *Act*, and Residential Tenancy Policy Guidelines 2A and 50. While I accept that the landlord may have been going through a difficult time in her marriage with her spouse, I do not find this to be a sufficient extenuating circumstance.

The landlord agreed that she went on a 2-month road trip with her spouse, from January to February 2022, after claiming that they separated in the summer of 2021, and after evicting the tenants for this reason, effective October 31, 2021, just 2 months prior. The landlord claimed that it was due to a prepaid and prebooked trip, which I do not find to be a reasonable explanation. The landlord testified that she needed a "safe" place to stay, her spouse had mental health issues, and she had to leave the marital apartment and sleep in the rental unit, when her spouse was in town. If this was the case, I do not find it reasonable that the landlord would then embark on a vacation of 2 months, in an RV, which is a confined space, and post photographs of same, smiling with her spouse, on a public social media site, Facebook. The landlord did not testify about this issue, until after the tenants raised the issue first, and produced photographs posted by the landlord on Facebook.

During this hearing, the landlord read aloud 4 witness statements, that she provided as evidence. She did not properly authenticate the documents or the contents therein.

The landlord did not produce her spouse as a witness at this hearing, to be cross-examined by the tenants, despite the landlord claiming that they had "semi-reconciled." The landlord's spouse did not attend this hearing to provide affirmed testimony and he did not confirm that he personally wrote a statement, or the contents of same, in support of the landlord for this hearing.

The landlord claimed that she provided written statements from three other people, but she did not produce them as witnesses at this hearing, to be cross-examined by the tenants. They did not attend this hearing to provide affirmed testimony and they did not confirm that they personally wrote statements, or the contents of same, in support of the landlord for this hearing.

The landlord claimed that the eviction of the tenants was an “isolated incident” in her 15-year history as a landlord. Yet, she later agreed that she evicted another tenant for violence, and she did not dispute the tenants’ allegation that 2 other units in the 4-plex, aside from the tenants’ rental unit, were given eviction notices, after she purchased the property.

The landlord claimed that she “felt bad” for evicting the tenants and that she offered an extra month for them to move out. Yet, this is not reflected on the 2 Month Notice, which is dated August 27, 2021, and effective October 31, 2021, as it only provided 2 months for the tenants to move out. The landlord did not revoke the 2 Month Notice or tell the tenants that it was rescinded, to provide the tenants with an opportunity to stay at the rental unit or move back into the rental unit.

It is undisputed that the landlord re-rented the rental unit to new tenants, after the tenants moved out. It is undisputed that the landlord received higher rent amounts of \$1,200.00 per month and \$1,400.00 per month, at different times. The landlord testified that she re-rented the rental unit to a new tenant, J, from December 2021, for 3 months, that \$700.00 was paid the first month, and that \$1,400.00 was paid thereafter, since J’s boyfriend moved in with her. The landlord testified that she re-rented the rental unit to another tenant, her boyfriend, and child, from February 2022, for 1.5 months, for rent of \$1,200.00 per month. The landlord testified that she rented the unit to 3 new tenants, pursuant to a written tenancy agreement, beginning on April 1, 2022, and continuing to the present date, for rent of \$1,400.00 per month. This is a significantly higher rent than what the tenants were paying during their tenancy of \$710.90, as it is almost double this amount. I find that the landlord made a significant profit from re-renting the unit to new tenants, from December 2021 to the present date, after the tenants vacated the rental unit on October 31, 2021.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the landlord or her close family members did not occupy the rental unit for at least 6 months after the tenants vacated on October 31, 2021. I find that the landlord failed to show extenuating circumstances prevented her from using the rental unit for the reason indicated on the 2 Month Notice.

Accordingly, I find that the tenants are entitled to 12 times the monthly rent of \$710.90, as compensation under section 51 of the *Act*, which totals \$8,530.80, from the landlord.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

The tenants are provided with a monetary order of \$8,630.80 total against the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$8,630.80, against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order 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 27, 2023

Residential Tenancy Branch