# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNETC, FFT

Introduction

On May 20, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant J.J. attended the hearing, and both Landlords attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that they served a separate Notice of Hearing package to each Landlord by registered mail on June 4, 2022, and Landlord K.S. confirmed receiving one package. However, he was prepared to proceed regardless. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were duly served the Notice of Hearing packages.

The Tenant then advised that they did not serve their evidence to the Landlords as they assumed that Service BC would do so for them. As this evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, this evidence was excluded and

will not be considered when rendering this Decision. However, K.S. acknowledged that they received a copy of the Notice.

K.S. confirmed that they did not submit any evidence on this file for consideration.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on April 1, 2008, with a different landlord and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 31, 2021, after being served the Notice. Rent was established at $1,050.00 per month and was due on the first day of each month. A security deposit of $500.00 was also paid.

K.S. advised that he had no idea how much rent was, as they could not get in contact with the previous owner.

K.S. was unsure when the Tenants were served the Notice; however, he agreed that the reason the Notice was given was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental." He reiterated that the contract of purchase and sale confirmed

that they wanted vacant possession of the rental unit and that they provided the previous owner with a letter requesting that the Notice be served accordingly.

The Tenant advised that they received the Notice before the end of August 2021.

All parties agreed that the Landlords' names were noted on the purchaser information on the Notice. As well, it was indicated on the Notice that the effective end date of the tenancy was October 31, 2021.

K.S. advised that the property was a duplex, and they had it inspected when they purchased the property. He testified that it was determined that the rental unit side was not safe to live in, so they moved into the other half of the duplex on or around November 1, 2021, and initiated renovations to the rental unit approximately a month later. He stated that these renovations were completed around February or March 2022, and that they rented the rental unit in May or June 2022.

He then contradictorily testified that they used the basement of the rental unit to sleep in, while keeping their personal property in the other half of the duplex. As well, he stated that the renovations commenced in the rental unit in January 2022, at which point they moved fully into the other half of the duplex. He subsequently advised that the rental unit was not livable as there was asbestos in the unit, and that the Tenants caused damage by screwing things into the drywall and taking them out later. In addition, he noted that the roof was damaged after the Tenants removed an antenna off of it, which broke the shingles.

The Tenant advised that the property is actually a four-plex, that the renovations to the rental unit commenced in November or December 2021, and that she knows this as their neighbours at the time, who were also their friends, informed them of this. She read directly from a letter from the neighbours, which indicated that they attended the property on March 20, 2022, and spoke with one of the Landlords. She testified that the letter indicated that the male Landlord confirmed that the basement unit was already rented, and that the upstairs unit was just recently rented as well. The Tenant submitted that the Landlords moved into one part of the property, but never moved into the rental unit. As well, she advised that the roof was fixed in 2020 by the previous owner.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit where all of the conditions of the sale have been satisfied and the purchaser asks the seller, in writing, to give the Notice because the purchaser intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlords requested that the seller of the rental unit give the Notice because the Landlords wanted to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated August 25, 2021, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***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*
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> > *(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.*

At the time the Notice was served, K.S. advised that the intention was for them to move into the rental unit and that the Notice was served in good faith. While it is possible that this may have been the case, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

Moreover, with respect to this situation, Policy Guideline # 2A states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on 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 for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
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> If a section 49.2 order is granted, the renovations or repairs that are accomplished must be the renovations or repairs that required vacant possession so that there was authority to grant the section 49.2 order. A landlord cannot obtain a section 49.2 order to end a tenancy for renovations or repairs and then only perform cosmetic repairs or other minor repairs that could have been completed during the tenancy.
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> A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances:

> The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.
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> These are 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:
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> - 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 so they did not receive the notice and new tenancy agreement.
> - A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.
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> The following are probably not extenuating circumstances:
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> - 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 the renovations and cannot complete them because they run out of funds.
> - A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

As noted above, the Landlords have the burden to provide sufficient evidence, over and above their testimony, to establish that they used the rental unit for the stated purpose on the Notice. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as

well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the “purchaser or close family member” only. While K.S. initially claimed that they moved into the rental unit on or around November 1, 2021, I note that his testimony changed throughout the hearing. At one point he alleged that they lived in the basement of the rental unit for a time, while also claiming that the rental unit was not safe to live in. In my view, if the rental unit was not safe to live in, it is not clear to me why they would choose to sleep in the basement area, especially when the other half of the property was where they kept their property, and where they ended up moving to anyways, allegedly.

Notwithstanding all the contradictions and inconsistencies in K.S.’s testimony regarding if they ever lived in the rental unit or not, and when the renovations to the rental unit commenced, K.S. specifically testified that they did move from the rental unit in January 2022, and that renovations commenced in the rental unit until February or March 2022. As the rental unit was clearly not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlords have failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

While K.S. did not specifically indicate that there were any extenuating circumstances which prevented them from occupying the rental unit for the stated purpose for at least six months after the effective date of the Notice, I can reasonably infer that his submissions regarding the alleged habitability of the rental unit were attempts to explain why they were unable to do so. However, I note that the Landlords have not submitted any documentary evidence to support their submissions that the rental unit was not safe or habitable to live in.

Regardless, even if I were to accept this argument, it would be reasonable to conclude that a person purchasing a property would do their due diligence prior to purchasing it, and would have determined if the rental unit was habitable or not prior to asking the previous owner to give the Notice for the Landlords to move in and occupy the rental unit. It is not consistent with common sense and ordinary human experience that the Landlords would have purchased the property and asked the previous owner to serve the Notice if the Landlords had not even seen the rental unit and determined if it would even be appropriate for them to occupy it. Even if this was the case, I reject this excuse

as an extenuating circumstance because determining the habitability of the rental unit could have been anticipated, and was not outside the Landlords' control.

Given my assessment of the evidence and testimony before me, I find that the above doubts and inconsistencies in the K.S.' testimony, and absolute lack of any supporting documentary evidence, cause me to question the reliability of K.S.' submissions and the credibility of the Landlords on the whole. I am satisfied that these submissions were likely crafted after receipt of the Notice of Hearing package in an attempt to portray a circumstance that did not exist. Ultimately, I do not accept that there were any extenuating circumstances that prevented the Landlords from occupying the rental unit and residing there for at least six months after the effective date of the Notice. As such, I find that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$12,600.00**.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$12,700.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: February 8, 2023

Residential Tenancy Branch