Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNECT FFT

Introduction

The Applicant seeks compensation pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act"). They also seek to recover the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was held on March 6, 2023 at 1:30 PM. Both parties attended the hearing. However, the Respondent did not join the hearing until 1:40 PM, at which point the Applicant had completed most of their testimony.

Neither party raised any issues regarding service of evidence or written submissions.

Issues

1. Is the Applicant entitled to compensation under section 51(2) of the Act?
2. Is the Applicant entitled to recovery of the filing fee under section 72(1) of the Act?

Background and Evidence

In reaching this decision, while I have considered all of the parties' evidence and submissions, I will *only* refer to what is necessary to explain my decision.

The tenancy began on October 15, 2019 and ended on April 30, 2022. The tenancy was ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). A copy of a written Residential Tenancy Agreement was in evidence, which evidenced that monthly rent was $1,400.00.

A copy of the Notice was in evidence. The Applicant (who was a tenant in the rental unit) testified that they were served the Notice on or about February 22, 2022. The effective end of tenancy date was indicated as being April 30, 2022. Page two of the Notice indicates that the tenancy was being ended because, as stated in the Notice:

> 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 unit.

Also submitted into evidence is a copy of a Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession (the "Buyers Notice") document. The Buyers Notice was executed and signed by the purchaser (that is, the Respondent in this dispute) on February 19, 2022. The Buyers Notice indicated that the Respondent purchaser entered into a Contract of Purchase and Sale dated February 19, 2022.

The Buyers Notice further indicated that all the conditions of purchase and sale were satisfied or waived, and, that the rental unit (referred to as "The Property" in the Buyers Notice) was currently rented to tenants. Last, and perhaps most importantly, the Buyers Notice indicated that the Respondent intended in good faith to occupy the rental unit.

The Applicant vacated the rental unit on or about April 30, 2022. But the Respondent and their family did not move into the rental unit. According to the particulars of the Applicant's application, the Respondent rented the rental unit to another tenant "only a month after we were required to move out." The Applicant testified that a friend pointed them to a Facebook Marketplace advertisement in which the rental unit was being offered to rent for $2,600.00. Indeed, the Applicant had a conversation with the Respondent in which the Respondent confirmed that the property had been rented out.

The Applicant seeks compensation in an amount equivalent to twelve months of rent on the basis that the Respondent failed to use the rental unit for the stated purpose in the Notice.

Under oath, the Respondent testified, and provided a lengthy written submission that mirrored and expanded upon their testimony, that the Respondent and their family fully intended in good faith to move into the rental unit. However, circumstances arose which steered those intentions off course.

The Respondent testified that their family moved from India in 2019. They began renting a place in New Westminster but have always wanted to purchase a home. In 2021, when they began looking, the real estate market was "very, very hot." They made lots of offers but they were unfortunately unable to secure a sale. And so, they began considering buying outside of the Lower Mainland. They settled upon property in Kamloops, and successfully made an offer for the rental unit (a small, single-family house).

The Respondent further testified that the entire family had begun discussions earlier on about moving before any sale went through. The family consists of the Respondent, their spouse, and their two minor children. There is one son who was born in 2003 and one daughter who was born in 2005.

Upon the sale closing, and as the possession date rapidly approached, the Respondent's daughter became "very much upset," and did not eat for a few days. According to the Respondent, the daughter had a difficult time moving from India in 2019, and now she was faced with yet another move away from the Lower Mainland in early 2022. The Respondent and their spouse then made the decision not to relocate, and instead rented out the property to a new tenant for $2,200.00.

The Respondent adamantly argued that it was not their intention to make a profit nor was it their intention to purchase the property as an investment property. Rather, it was a "very, very difficult and stressful situation." And, while it was their intention to "buy a little home and live a happy life," the circumstances with their daughter led them stay put in the Lower Mainland and not to move.

Under cross-examination by the Applicant the Respondent was asked whether there was any medical or other documentation supporting the Respondent's claim that the daughter was in distress. The Respondent testified that they did not want to put the daughter through anything like that type of situation, and that there was no such evidence.

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.

Section 51(2) of the Act states that

> 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

(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, there is no dispute that the stated purpose for ending the tenancy—that is, that the Respondent purchaser and their family occupy the rental unit—was never accomplished. Indeed, the Respondent secured a new tenant within weeks of the Applicant and their family moving out. As such, the Applicant has established a *prima facie* case for compensation under section 51(2) of the Act.

Having made this finding, I must consider whether there were extenuating circumstances under section 51(3) of the Act to excuse the Respondent. Section 51(3) 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
>
> (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.

In this dispute, the “extenuating circumstances” were the Respondent’s daughter’s change in behavior upon coming to the realization that a move was imminent. The Respondent’s daughter became “very much upset” and “started behaving very strangely” (see Respondent’s written submission, page 1). The daughter did not want either to change her school or move away from her friends. Further, the Respondent and their spouse “did not want to put our daughter in stress and depression. We decided to give priority to our daughter. We decided not to take a risk on the cost of our daughter.”

The Respondent and their spouse thought (perhaps hoped) that their daughter might change her mind, but even by August 2022, when the family decided to put the property on the market, the daughter had not. See Respondent’s written submission, page 2.

It is not lost on me that a significant change in living circumstances may cause unexpected upheaval and stress within a family. Indeed, this is even more pronounced when the family includes teenagers. What is more, I am mindful that the Respondent's children have gone through what was likely an impactful move from India in 2019.

However, that a 17-year-old teenager would react in the manner that she did cannot, by any stretch of a reasonable parent's expectations, be either unexpected or unforeseen. I am unable to find that the daughter's behavior was totally and completely unexpected and therefore an extenuating circumstance. Nor, it should be noted, was there any medical evidence establishing that the daughter's temporary condition was such that a move would have had a significant or lasting impact on her well-being and mental health.

Furthermore, it cannot be forgotten that (despite the well-meaning love, affection, and care that parents bestow upon their children) it is ultimately a parent's or legal guardian's role to make final decisions on where a family will live. This is not to say that the Respondent's concern for their daughter's well-being ought to be discounted. But the change in the daughter's opinion on where the entire family should live, not to mention the family's prolonged and earnest efforts at finally purchasing a home, is not, I must respectfully conclude, an extenuating circumstance. There are therefore no extenuating circumstances under section 51(3) of the Act to excuse the Respondent from paying the Applicant under section 51(2) of the Act.

Given the above, and after taking into careful consideration all of the evidence before me, it is my finding that the Applicant has proven their claim for $16,800.00 under section 51(2) of the Act.

Finally, under section 72 of the Act, an arbitrator may order one party to pay a fee to another party in a dispute resolution proceeding. Typically, when an applicant is successful in their application, the respondent is ordered to pay an amount equal to the applicant's filing fee. In this case, since the Applicant was successful with their application, the Respondent is also ordered to pay $100.00 to the Applicant.

In total, the Respondent is ordered to pay $16,900.00 to the Applicant. The Applicant is granted a monetary order with this Decision for the amount awarded, and they must serve a copy of the order upon the Respondent by any method of service permitted under section 88 of the Act. The Applicant may, if necessary, enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The application is hereby granted.

The Respondent is hereby ordered, pursuant to sections 51(2) and 72(1) of the Act to pay $16,900.00 to the Applicant.

This decision 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 way an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: March 10, 2023

Residential Tenancy Branch