

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 23, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord was deemed to be served the hearing documents on April 28, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 51 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on May 1, 1992 with monthly rent payable on the first of each month in the amount of \$508.00. The Tenant paid a security deposit of \$225.00 on approximately May 1, 1992.

The Tenant advised that the Landlord issued her a 2 Month Notice to End Tenancy, for Landlord's Use, August 31, 2008 with an effective move out date of October 31, 2008.

The Landlord claims that he issued the Tenant the notice to end tenancy so his 42 year old son could move into the rental unit. The Landlord claimed that after his son fell into financial hardship his son decided to get a roommate which meant he wasn't going to move into the Tenant's rental unit. The Landlord testified that his son told the Landlord that he was not moving into the Tenant's suite on November 3, 2009.

The Landlord advised that he re-rented the Tenant's unit on November 15, 2008 for a higher rent of \$690.00 per month. The Landlord claimed that the new renter was scheduled to move into a different vacant suite but that when his son decided not to move in the Landlord offered the new renter the Tenant's suite.

When asked why the Landlord chose to evict this Tenant and not another the Landlord replied stating that the Tenant's unit was close to the laundry facility and that his son could provide security for the laundry room.

The Tenant confirmed that the Landlord tried to offer her \$700.00 to settle before the Dispute Resolution Hearing and that two weeks before her scheduled move on October 31, 2008, the Landlord approached the Tenant and offered her to stay in her rental unit if she agreed to a rent increase of \$160.00 per month which would bring her monthly rent payment to \$668.00 per month.

I asked the Landlord why he would make an offer to increase the Tenant's monthly rent two weeks before she was to move out and 2 ½ weeks before he knew his son was not going to move into the rental unit. The Landlord stated that there was another rental unit vacant that he could put his son in. When asked what the driving force was to offer the Tenant to pay a higher rent the Landlord responded by saying "yes I offered the Tenant to stay at a higher rent as I am in business for myself".

Analysis

When issuing a notice to end tenancy for landlords use, the onus is on the Landlord to prove the "good faith" requirement which imposes a two part test as set out in the *Residential Tenancy Policy Guideline #2*. The first of the two part test is that the landlord must truly intend to use the premises for the purposes stated on the notice to

end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

A significant factor in my decision is determining the credibility of the Landlord's testimony and evidence. In assessing credibility I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the Tenant over the Landlord.

The Landlord provided contradictory evidence in relation to why his 42 year old son did not move into the rental unit. First the Landlord stated that his son was having financial difficulty and that is why his son was going to move in and later the Landlord stated that his son's financial situation got worse so that is why his son could not move in. Also the Landlord attempted to negotiate a higher rent with the Tenant with the offer for her to stay in the rental unit if she agreed to pay a higher rent, two weeks before she was scheduled to move out. The Landlord's son did not tell the Landlord he was not moving into the rental unit until November 3, 2009. Then there is the fact that the Landlord re-rented the unit at a higher rate and that the Landlord tried to settle with the Tenant for a lower dollar amount than what she is entitled to under the Act, prior to the Dispute Resolution Hearing.

Based on the aforementioned I find that the Landlord has failed to prove the "good faith" requirement when evicting a Tenant for Landlord's use. In this situation the Tenant had

resided at the rental unit for over 16 years and had a lower rent than what the Landlord wanted to charge. The Landlord chose to evict the Tenant, in violation of the *Residential Tenancy Act*, instead of applying under Section 43(3) of the *Act* for an additional rent increase.

I must caution the Landlord that if he chooses to continue to evict tenants in violation of the *Residential Tenancy Act* then he could be subject to an Administrative Penalty under Section 94.1 of the *Act*.

Monetary Order – I find that the Tenant is entitled to a monetary claim pursuant to section 51(2) of the *Act* which states that the Tenant is entitled to double the monthly rent payable under the tenancy agreement. I hereby approve the Tenant's claim in the amount of \$1016.00. (\$508.00 x 2)

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$1,016.00. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: July 27, 2009.

Dispute Resolution Officer