



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This month to month tenancy started on July 5, 2008 and ended on May 6, 2009 when the Tenant moved out. Rent was \$875.00 per month plus utilities. On March 31, 2009, the Landlords served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The ground indicated on the Notice for ending the tenancy was that the Landlords or a close family member would be occupying the rental unit.

The Landlords admitted that once the Tenant moved out of the rental unit, it was occupied by the brother and cousin of one of them. The Landlords claimed that the brother was very ill and was financially and emotionally dependent on them and therefore they considered him a dependent. The Landlords argued that as a dependent, the brother was a close family member like a child.

The Tenant argued that a brother and cousin were not close family members as defined by the Act. The Tenant also argued that the Landlords had previously tried to end the tenancy by serving her with a One Month Notice to End Tenancy for Cause dated January 26, 2009 but that Notice was set aside.

Analysis

Section 51(2)(b) of the Act says that if a rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the Notice, the Landlord must pay the tenant an amount equivalent to double the amount of rent payable under the tenancy agreement.



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Section 49(1) of the Act defines close family member as “an individual's father, mother, spouse or child or the father, mother, or child of that individual's spouse.” Despite the Landlords' argument that their brother was a dependent, the above-noted definition does not refer to a dependent nor does it suggest that any of the eligible individuals must be dependent on the Landlord. In allowing the rental unit to be occupied by the brother and cousin of one of the Landlords, I find that the Landlords have not used the rental unit (for the six month period starting May 7, 2009) for the purpose stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2009.

Consequently, I find that the Tenant is entitled to compensation equivalent to two months rent or \$1,750.00. As the Tenant has been successful in this application, she is also entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

A monetary order in the amount of \$1,800.00 has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 10, 2009.

Dispute Resolution Officer