

DECISION

Dispute Codes MNDC, O

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

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 February 1, 2006 and ended on September 30, 2009 pursuant to a 2 Month Notice to End Tenancy for Landlords' Use of Property dated July 9, 2009. The Notice alleged that the Landlords were ending the tenancy because they or a close family member intended to occupy the rental unit. Rent was \$808.86 per month.

The Parties agree that the Landlords told the Tenant that their son would be moving into the rental unit with his son. In mid- to late-August, 2009, however, the Landlords' son decided not to move into the rental unit and instead allowed his wife's brother and their 3 children to rent from him commencing October 1, 2009. The Tenant claimed that as a result of having to move, she incurred moving expenses and a higher rate of rent for which she also sought compensation.

Analysis

Section 49 of the Act defines a "close family member" as an individual's father, mother, spouse or child or the father, mother or child of that individual's spouse."

Section 51(2) of the Act says that "if steps have not been taken to accomplish the stated purpose for ending the tenancy under s. 49 within a reasonable period after the effective date of the Notice, or the rental unit is not used for that 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 that is equivalent of double the monthly rent payable under the tenancy agreement."

I find that the Landlords' son's brother-in-law and his family are not close family members as defined by the Act. Consequently, I further find that the rental unit was not

used for the purpose stated on the 2 Month Notice within a reasonable period of time after the effective date of the Notice.

The agent for the Landlords argued that the Landlords should not be responsible for compensating the Tenant because their son intended in good faith to occupy the rental unit. While a Landlord must issue a 2 Month Notice under s. 49 in good faith, good faith is not a requirement under s. 51(2) of the Act which only requires that steps must be taken within a reasonable period of time. I also note that the Landlords had an opportunity to withdraw the 2 Month Notice as early as a month prior to the end of the tenancy when they knew or should have known that the unit would not be used for the intended purpose but they did not do so. Consequently, I find that the Landlords must pay the Tenant compensation equivalent to 2 months rent or **\$1,617.72**.

The Tenant also relied on s. 67 of the Act which states that if a party breaches the Act, the other party may be entitled to compensation for damages they sustain as a result of that breach. The agent for the Landlords argued that if the Tenant was entitled to compensation it was limited to the amount allowed under s. 51(2) of the Act. However, there is nothing in the Act that limits the compensation to which a Tenant may be entitled for a breach of s. 49 of the Act to 2 months rent. Furthermore, section 8 of the Interpretation Act of B.C. states that "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." Consequently, in the absence of a provision specifically restricts the Tenant to compensation under s. 51(2) for a breach of s. 49, I find that the Tenant is entitled to make a claim for other compensation.

However, compensation is only payable under section 67 of the Act if the breach by the Landlord caused damages or resulted in the Tenant incurring expenses that she otherwise would not have incurred. The Tenant admitted that she would have had to incur the same amount for moving expenses even if the Landlords were not in breach of the Act. I find that the Tenant did not incur additional expenses for moving as a result of the Landlords' breach of the Act because she would have incurred them in any event and as a result, that part of her claim is dismissed.

The Tenant claimed that her new rent is \$1,200.00 per month. The Tenant admitted that her new rent includes utilities whereas her old rent did not. The Tenant also admitted that her new residence is the top part of a house rather than the basement suite of a townhouse and that it is cleaner, newer and closer to amenities such as shopping. In the circumstances, I find that the Tenant has not shown that she has had to pay higher rent due to the Landlords' breach of the Act and as a result, that part of her claim is also dismissed.

Conclusion

A Monetary Order in the amount of **\$1,617.72** 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: March 08, 2010.

Dispute Resolution Officer