



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

The landlord acknowledged receipt of the tenant's September 1, 2010, amended Application, which corrected the Application, requesting compensation for damage or loss.

The landlord had not yet claimed the evidence that was served to her via registered mail within the required time frame, therefore, I reviewed the documents with her, most of which included items she would have seen such as Notices of rent increase, letters, photographs of the rental unit and a copy of her September 10, 2010, advertisement for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to compensation under section 51 of the Act in the sum of \$1,876.96?

Is the tenant entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed to the following facts:

- The tenancy commenced on June 1, 2006;
- Rent was due on the first day of the month;
- At the end of the tenancy rent was \$938.48 per month;
- On June 2, 2010, the tenant was given a 2 Month Notice ending tenancy for landlord's use of the property, as the landlord or a close family member was going to move in;
- That the tenant moved out by August 31, 2010, and was provided with 1 month's compensation as required by the Act; and
- That the landlord did not move in to the rental unit and on September 10, 2010, an advertisement was placed on a popular web site advertising the unit with a 1 year lease at rent of more than \$300.00 per month that what the tenant had been paying.

The landlord was planning on moving into the unit and sometime in August discovered that neighbours of the property where she was building a home had gone to the City variance committee, that her plans to build would be stalled, thus delaying her need to move into the unit. The landlord did not offer to withdraw the Notice as the tenant was already planning to move.

The tenant submitted that before issuing the Notice the landlord should have been sure that she was able to proceed with her plans and that her failure to do so resulted in his unnecessary eviction which was very disruptive. The tenant also questioned the fact that the unit was advertised within 10 days of his moving out, at a rental rate that well exceeded his monthly rent.

The landlord could not proceed with her plans and would have considered providing the tenant with a different unit, had he approached her. The landlord's intent was clear and not meant to adversely affect the tenant, but her plans were thwarted. The landlord did not supply copies of any documents showing permit applications or board of variance letters showing hearing dates. The board of variance hearing was held on September 3, 2010. The landlord is currently living in the building, but the tenant's unit was rented effective October 1, 2009, with the new occupants recently moving out.

During the hearing the landlord offered the tenant one month's compensation which the tenant declined.

Analysis

Section 51 of the Act provides:

Tenant's compensation: section 49 notice

- 51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*
- (1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*
- (1.2) *If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*
- (2) In addition to the amount payable under subsection (1), if**
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or**
- (b) 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.**

(Emphasis added)

While the landlord may have intended to move into the rental unit and to occupy the unit; within only 10 days of the tenancy ending, the landlord had begun advertising the unit for a rent that was more than \$300.00 per month than the tenant's rent. I do not believe that the landlord evicted the tenant so that the unit could be re-rented at a higher rate, but I do find that the landlord failed to ensure that her intention to live in the unit was supported by fact. The intention of the landlord would be a focus of my analysis if the tenant had applied to cancel the Notice and raised the issue of bad faith; which he did not. Therefore, the tenant had accepted that the landlord was acting in good faith.

Prior to the effective date of the Notice the landlord would have known she had a board of variance application hearing that could potentially result in her plans being stalled. The hearing was held on September 3, 2010. The landlord did not approach the tenant with an offer to withdraw the Notice, nor did the landlord supply any evidence supporting her claim that her plan to move into the unit was thwarted by outside forces that were beyond her control.

The landlord had a responsibility to ensure that the reasons upon which she issued the Notice were in fact going to come to fruition. I find that the landlord failed to diligently assess the need to evict the tenant at the time that she did. I base this upon the lack of any evidence supporting the landlord's submission combined with the tenant's submission showing that the unit was almost immediately advertised for rent, with new occupants moving in at the end of September, 2009.

There was no evidence before me that the landlord took steps to achieve her stated purpose and as the landlord did not ever move into the unit it was not used for the stated purpose given on the Notice ending tenancy. Therefore, pursuant to section 51(2)(b) of the Act, I find that the tenant is entitled to double the rent payable under the tenancy agreement at the time the tenancy ended; \$1,876.96.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim in the amount of \$1,926.96, which is comprised of \$1,876.96 in compensation under the Act and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,926.96. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims 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: September 21, 2010.

Dispute Resolution Officer