



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on March 27, 1998 and ended on October 31, 2009 when the Tenant moved out. Rent was \$900.00 per month. The Landlords purchased the rental property sometime prior to October 31, 2009.

The Landlords admit they instructed the previous owners' realtor to serve the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 24, 2009. The Landlords claim that they do not recall what boxes (or grounds) were checked off on the 2nd page of the Notice but admit that it was their intention that one of the Landlord's children would reside in the rental unit. The Landlords also claim that it was their intention to do renovations which they argued would have required vacant possession. The Landlords admit that their son did not move into the rental unit and that they re-rented the rental unit in January 2010 once renovations were completed.

The Tenant claimed that there was only one box checked off on the Notice and that was that "all of the conditions for 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." The Tenant admitted that she no longer had a copy of the 2 Month Notice to End Tenancy because she had destroyed it. The Tenant argued that the Landlords did not intend in good faith to have a close family member occupy the rental unit because she was approached by their realtor who wanted to know if "she was flexible on paying more rent" prior to being served with the 2 Month Notice.



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Analysis

Based on the evidence of both Parties, I find that the Tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 24, 2009 with an effective date of October 31, 2009. Although the Landlords claimed that they could not recall what ground or grounds had been checked off on the Notice, I find it very likely that at least one of the grounds was that "all of the conditions for sale of the rental unit ha[d] been satisfied and the purchaser ha[d] asked the landlord, in writing, to give th[e] Notice because the purchaser or a close family member intend[ed] in good faith to occupy the rental unit."

I am persuaded that this is the case given that the Landlords were purchasing the rental property and agreed that they had instructed the seller's realtor to serve the Tenant with a 2 Month Notice because it was their intention (for one) that their son was going to be living in the rental unit. However, I find that the Landlords did not use the rental unit for the purpose intended but rather re-rented it to a tenant who was not a close family member in January of 2010. Furthermore, I find it unlikely that the 2 Month Notice would have had a box checked off that the purchasers intended to do renovations that required vacant possession because no such ground exists under s. 49 (as it pertains to purchasers). If the Landlords wanted to end the tenancy to do renovations, they would have had to serve the Tenant with a 2 Month Notice to End Tenancy *after* the property was transferred to them.

Section 51(2) of the Act says that if a Landlord does not use the rental unit for the stated purpose for at least 6 months after the effective date of the notice, the landlord or purchaser must pay the tenant double the monthly rent payable under the tenancy agreement. Consequently, I find that the Tenant is entitled to compensation of \$1,800.00. I also find that the Tenant is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of \$1,850.00 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: January 05, 2011.

Residential Tenancy Branch