



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for compensation pursuant to section 51 of the Residential Tenancy Act (the "Act") in respect to a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on March 31, 2011.

The parties appeared and the hearing process was explained to them. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, respond each to the other and to make submissions to me.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the tenant entitled to receive a monetary order equal to two months' compensation pursuant to section 51 of the Residential Tenancy Act (the "Act")?

Background and Evidence

I heard undisputed testimony that this month to month tenancy, beginning on October 30, 2009, ended on May 31, 2011 as a result of the tenant receiving a 2 Month Notice to End Tenancy (the "Notice") under section 49 of the Act for landlord's use of property, dated March 31, 2011, for an effective move out date of May 31, 2011.

Monthly rent was \$1,050.00.

The reason listed on the Notice stated that the landlord had all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant testified that she was told she and her family had to vacate the rental unit on that date due to the landlord's plan to repair the rental unit so that vacant possession was needed in order to accomplish the same.

The tenant submitted that she begged the landlord to reconsider as it was a financial and emotional hardship to be forced to move, as a single mother with 4 children.

The tenant submitted that the landlord had ulterior motives in issuing the notice, which she believed was the result of handing the landlord a list of repair requests. The tenant submitted that she finally had to reduce the requests to writing as the landlord previously ignored her complaints. The tenant submitted that the landlord issued the Notice immediately after receiving the written requests.

The tenant stated that the landlord placed a "For Rent" sign in the window of the rental unit on June 20, 2011, and that new tenants moved into the rental unit on July 1, despite the landlord not having started any repairs.

The tenant stated she is aware of this situation because she was able to find another rental home on the same street and from having talked to the new tenants.

The tenant further submitted that the new tenants moved in unaware that repairs needed to be done and that the new roof was put on after the new tenants moved in.

In response, the landlord stated the home was not safe for occupation while work was going on.

The landlord denied knowing when she received the tenant's written list of repair requests.

Upon query, the tenant stated the roofing was done at the end of July, and then later in her testimony changed that date to mid-July.

Upon query the landlord stated that new tenants moved into the rental unit on July 1, 2011.

The landlord's evidence included a copy of the Notice, a copy of an invoice from a restoration company, dated July 7, 2011, invoices from an energy solution company, dated July 21, 2011, an application for a building permit, dated April 7, 2011, a building permit, dated April 8, 2011, an undated invoice from a roofer, and invoices from a roofing supply store, one dated June 6 and the other dated July 12, 2011.

The landlord's witness, her sister, stated that the new tenants did not move into the rental unit on July 1, but gave no clear answer as to when they did move in.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 51 of the Residential Tenancy Act provides if steps have not been taken to accomplish the stated purpose for ending the tenancy listed on the Notice under section 49 within a reasonable period after the effective date of the notice, the landlord must

pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find upon a balance of probabilities that the landlord did not take steps to accomplish the stated purpose for ending the tenancy.

I accept the tenant's testimony that the landlord placed the rental unit on the market shortly after the end of the tenancy, which leads me to conclude that the landlord issued the Notice for the purpose of illegally evicting the tenant due to repair requests.

In reaching this conclusion, I weighed the landlord's evidence and testimony of the parties and I find the testimony of the landlord lacked credibility. For instance, the landlord first claimed that the roofing was done at the end of July and then changed that date to mid July.

The landlord stated that new tenants moved into the rental unit on July 1, but her sister claimed another date. In order to prove the date of occupancy for the new tenants, the landlord could have easily produced the new tenancy agreement, but failed to do so, despite saying that there was a tenancy agreement with the new tenants.

Additionally, the landlord submitted evidence showing that the repair work was not started or completed until well after the new tenants moved into the rental unit, which substantiates the tenant's position that the rental unit was not required to be vacant during the work.

Additionally, the evidence submitted by the landlord showed that the landlord did not have the permits or approvals at the time the Notice was issued, further casting discredit on the landlord's Notice.

I therefore do not find the testimony and evidence of the landlord is credible and that on a balance of probabilities an ulterior motive existed whereby the landlord ended the tenancy due to the landlord's failure to show that the renovations and repairs required the rental unit to be vacant for a period of time that would warrant ending the tenancy.

I therefore find the tenant has established a **monetary claim** in the amount of **\$2,150.00** as compensation under Section 51 of the Act.

Even had I not found that the landlord had not taken steps to accomplish the stated purpose, I would still grant the tenant's application, as the landlord did not have the necessary permits at the time the Notice was issued.

As the tenant was successful with her application, I allow her recovery of the filing fee, in the amount of \$50.00.

Conclusion

Pursuant to Section 67 of the Act, I find that the tenant is entitled to a **monetary order** in the amount of **\$2,150.00**, comprised of \$2,100.00 representing the amount of \$1,050.00 monthly rent, doubled, as compensation under section 51 of the Act, and the \$50.00 fee paid by the tenant for this application.

I am enclosing a Monetary Order for \$2,150.00 with the tenant's Decision. This Order is a **final, legally binding Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this Monetary Order.

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: October 25, 2011.

Residential Tenancy Branch