



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male tenant (the tenant) confirmed that the landlords' representative handed the tenants the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on March 28, 2011. The male landlord (the landlord) confirmed that the tenant handed the landlords a copy of the tenants' dispute resolution hearing package on or about October 20, 2011. The tenant confirmed that he received the landlords' written evidence in advance of this hearing. I am satisfied that the above documents were served by the parties to one another in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award pursuant to sections 67 and 51(2)(b) of the *Act* because the rental unit was not used by the landlords for the purpose stated in their notice to end tenancy for at least 6 months? Are the tenants entitled to recover their filing fee for their application from the landlords?

Background and Evidence

This one-year fixed term tenancy commenced on February 1, 2010. When this fixed term tenancy expired, this converted to a periodic tenancy, until the tenants vacated the premises on May 15, 2011. Monthly rent was set at \$1,200.00, payable on the first of each month. The tenant confirmed that the landlords have returned the tenants' \$600.00 security deposit. The tenant also confirmed that the parties agreed that the tenants would not have to pay their last month's rent in accordance with the provisions of section 51 of the *Act* following issuance of the landlords' 2 Month Notice.

The tenants applied for a monetary award of \$2,400.00, an amount that was double their monthly rent. They did so because they maintained that as soon as the landlords moved into the premises on June 1, 2011, they began renovations in order to ready the premises for resale. They applied for the monetary award pursuant to section 51(2)(b) of the *Act* because they maintained that the landlords were not acting in good faith when they issued the 2 Month Notice to occupy the rental premises themselves.

The landlord gave undisputed testimony that the landlords' sale of their previous principal residence in the Lower Mainland took effect on May 12, 2011. The landlord gave undisputed oral testimony that the landlords took possession of the tenants' former rental premises on May 16, 2011. At that time, he said they commenced living in their trailer on the street a few doors down from the tenants' former premises. The landlord testified that the landlords immediately undertook renovations to the premises to prepare for their use of the property as their principal residence. During this period, the landlords were in frequent attendance at the property while the renovations were being undertaken. The landlord gave undisputed oral testimony that they had no other principal residence during this time. He said that these renovations were completed by approximately June 12, 2011, at which time the landlords were able to move into the tenants' former rental premises and assume full-time residency there.

The landlord entered written evidence that the landlords decided to sell the property when they realized that it was not suitable for their business needs. They listed the property for sale on October 7, 2011. They were successful in selling this property with a possession date of November 22, 2011.

The tenant did not dispute any of the oral or written evidence regarding the dates cited in the landlords' oral or written evidence. His concern was that the landlords did not demonstrate good faith in using the property for the purposes stated in their 2 Month Notice. He maintained that the landlords had no intention of living at these premises on a permanent basis.

Analysis

The *Act* allows a landlord to end a tenancy when:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The reason cited in the landlords' 2 Month Notice was that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member..."

Section 51 (2)(b) of the *Act* provides that if the rental unit is not used for the purpose stated in the landlord's notice to end tenancy for landlord use of the property 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 the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, there is undisputed evidence from the landlord that the landlords sold their principal residence in the Lower Mainland on May 12, 2011 and were overseeing the renovation of their premises by May 16, 2011, shortly after this tenancy ended. Although they did not sleep in the former rental unit while these renovations were being undertaken, they had no other fixed address and slept in their trailer a few doors away. I am satisfied by the landlords' undisputed evidence in this regard that they were in effect occupying the premises to the extent that they could as of May 16, 2011 while the renovations were undertaken.

Based on the evidence before me, I am satisfied that the landlords did occupy the tenants' former rental unit for at least six months prior to the completion of their sale of this property on November 22, 2011. As such, I dismiss the tenants' claim for a monetary award of the equivalent of double their monthly rent without leave to reapply.

Since the tenants have been unsuccessful in their application, I dismiss their application to recover their filing fee without leave to reapply.

Conclusion

I dismiss the tenants' application without leave to reapply.

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 09, 2012

Residential Tenancy Branch