



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and FF

Introduction

This application was brought by the tenant on December 22, 2011 seeking a Monetary Order for the equivalent of two months' rent on the grounds that the landlord did not use the rental unit for the purposes stated in a Notice to End Tenancy for landlord use. The tenant also sought to recover moving and storage costs from the landlord.

As a matter of note, the landlord declined to provide his address for receipt of this decision, and stated that he preferred the mail to be sent to his attention at the rental unit. He had declined a similar request from the tenant who had had applied for substitute service to serve the Notice of Hearing to the rental unit.

In addition, the second named respondent is the original landlord who was excused from the hearing with consent of the tenant once examination of the purchaser's direction to him to serve notice, and the Notice to End Tenancy, showed full compliance on his part.

Issue(s) to be Decided

Has the tenant proven that the landlord failed to use the rental property for the purpose stated in the Notice to End Tenancy?

Background and Evidence

The tenancy in question began on March 15, 2010. Rent was \$1,600 per month at the conclusion of the tenancy and the landlord held a security deposit of \$850 which has been returned.

On October 10, 2011, the former landlord issued a Notice to End Tenancy for landlord use on the grounds that all the conditions for sale of the rental building had been removed and the purchaser had asked the landlord to serve notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

The former landlord submitted a letter dated October 6, 2011 to him from the purchaser noting that conditions had been removed and asking that he give notice to the tenant under section 49 of the Act (two-month notice for landlord use) requiring vacant possession by December 14, 2011.

During the hearing, the tenant gave evidence that because her two dogs made finding a new rental unit challenging, on receiving the Notice to End on October 10, 2011, she started searching immediately for new accommodation and was able to find a new rental for November 1, 2011.

Subsequently, the tenant saw an advertisement beginning on December 17, 2011 advertising the subject rental unit at \$1,700.

The purchasing landlord said that he had intended in good faith to have the rental unit occupied by his mother-in-law. However, he said that she had occupied it on the night of December 15, 2011 but had refused to stay longer because it was too big and her allergies reacted to the residual odours of the two dogs.

The landlord stated that many prospective tenants had viewed the rental unit, but none were willing to take it because of the condition it was left in.

The tenant said it had been left in the same condition it was at the beginning of her tenancy and noted that the original landlord had returned her full security deposit.

Finally, in February, the new landlord came to agreement with a new tenant who stated that he would take the rental unit provided the landlord supply him with materials to repaint, two weeks free rent, and reduced rent of \$1,500 per month.

The landlord said he has now owned the unit since December 15, 2011 and he has incurred substantial costs and losses.

Analysis

Section 51(2)(b) of the *Act* states that, if 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 if the unit is not used for the stated purpose for at least six months:

“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.”

In the present matter, I find that neither the landlord nor close family members occupy the rental unit as stated in the Notice to End Tenancy and the landlord is compelled by section 52(2)(b) of the *Act* to compensate the tenant the equivalent of two month's rent (\$1,600 x 2 = \$3,200). I further find that the tenant should recover the \$50 filing fee for this proceeding from the landlord.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$3,250.00, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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 05, 2012.

Residential Tenancy Branch