Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The Tenant said she served the Landlords with her Application, Notice of Hearing and evidence package (the "hearing packages") on January 29, 2012 by leaving them in the Landlords' mail box at their residence because they would not answer the door. The Landlords admitted that they received the Tenant's hearing packages. The Landlords, A.V.D. and I.V.D., also admitted that they accepted service of the Tenant's hearing package on behalf of K.D. who is aware of these proceedings. Section 89(1) of the Act says that a Tenant's application must be served either in person or by registered mail. However given that the Landlords admitted that they received the hearing packages, I find pursuant to s. 71(2)(c) that the Landlords were sufficiently served for the purposes of the Act.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on December 25, 1998 and ended on January 31, 2011 pursuant to a 2 Month Notice to End Tenancy. At the end of the tenancy, rent was $611.00 per month. On November 29, 2010, the Tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 23, 2010. The grounds alleged on the notice were as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse;
- The Landlord has all the necessary permits and approvals required by law to demolish the rental unit or to repair it in a manner that requires the rental unit to be vacant.

The Tenant's application to cancel this notice was heard on January 10, 2011 and was dismissed by the Dispute Resolution Officer for the following reasons:

> "*I do not accept that the rental unit must be vacant in order to effect the repairs intended by the landlord....I find that K.D. intends to move into the rental unit and accordingly I find that the Landlords have established grounds to end the tenancy*."

The Tenant now claims in this application that the Landlords did not use the rental unit for the purpose(s) set out in the 2 Month Notice. The Landlords admit that K.D. never moved into the rental unit however they claim this was due to factors beyond his control. In particular, the Landlords claim that K.D. was (and continues to be) unable to move due to illness and that as a result by November 2011 they decided they could not afford to hold it for him any longer and listed the property for sale.

The Landlords also claim that repairs took longer than they anticipated because there was much to repair and they could not afford to hire contractors to do the work. The Landlords provided 4 photographs showing some of the Tenant's belongings that they said they took during an inspection in May 2010, and six (before and after) photographs showing renovations to a bathtub and shower area, window coverings and a bi-fold closet door. The Landlords also provided a receipt dated March 29, 2011 for "garbage and reno removal" and a witness statement dated March 18, 2011 of a cleaner who claimed that there was mould in a bathroom, mice feces in kitchen cabinets and unspecified "structural damage." The Landlords further provided a list of some of the work they said was done to the rental unit.

The Parties also participated in another hearing on May 26, 2011 with respect to an application by the Tenant to recover the one month's compensation payable under s. 51 of the Act when a Tenant receives a 2 Month notice and for the return of a security deposit. In a decision issued on May 27, 2011, the Dispute Resolution Officer granted the Tenant's application. The DRO noted that the Landlords claimed they did not believe the Tenant was entitled to the return of the security deposit because of the condition in which she left the rental unit, however the Landlords had "not made application for dispute resolution to keep the security deposit nor have they been issued an Order allowing them to retain the security deposit."

The Landlords applied for a review of that decision (in part) on the grounds that they had new and relevant evidence that was not available at the time of the hearing, namely, the photographs of the renovations referred to above. However, the Dispute Resolution Officer who considered the Review application noted, "*the landlord had previously submitted those photographs and they are irrelevant because the landlord did not have a monetary claim before the dispute resolution officer*." To date the Landlords have not brought a claim against the Tenant for alleged damages to the rental unit.

Analysis

Section 51(2) of the Act says as follows:

> "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,
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> the landlord or 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."

I am unable to give any weight to the Landlords' argument that repairs to the rental unit took longer than anticipated in part due to the condition in which it was left by the Tenant. Firstly, the Landlords provided no reliable evidence of the condition of the rental unit at the end of the tenancy (such as a condition inspection report) but instead provided a list of repairs or renovations they said they made. Secondly, the DRO found in the hearing held on January 10, 2011 (having regard to this evidence) that the Landlords did not require vacant possession to make repairs and the Notice was upheld ***solely*** on the ground that a landlord or close family member would be occupying the rental unit.

The Landlords admit that the rental unit has never been occupied by the Landlord, K.D., as they anticipated (or any other Landlord or close family member) but argued that this was due to unforeseen circumstances. However, a good faith intention on the part of the Landlord is **only** relevant when considering an application to cancel a 2 Month Notice under s. 49 of the Act (see RTB Policy Guideline #2). Section 51(2) of the Act does not provide that the Landlords may simply have good intentions to use the rental unit for the purpose stated on the 2 month notice to excuse them from paying compensation. Instead, section 51(2) states that a tenant is entitled to compensation if the Landlords do not **in fact**, use it for the stated purpose. As a result, I find that it is irrelevant if the Landlords honestly intended that K.D. would occupy the rental unit but was unable due to do so due to ill health (or for any other reason).

In summary, I find that the tenancy ended because the Landlords claimed the rental unit would be occupied by the Landlord, K.D., however the Landlords admit that this never occurred and that they are now forced to sell the property. Consequently, I find that the Tenant is entitled pursuant to s. 51(2) of the Act to compensation equal to 2 months rent or $1,222.00. As the Tenant has been successful in this matter, I also find that she is entitled pursuant to s. 72(1) of the Act to recover from the Landlords the $50.00 filing fee she paid for this proceeding.

Conclusion

The Tenant's application is granted. A Monetary Order in the amount of **$1,272.00** 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: March 27, 2012.

Residential Tenancy Branch