



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 an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue(s) to be Decided

Is the tenant entitled to compensation and the return of his filing fee?

Background and Evidence

The tenancy ended on August 15, 2011, after the tenant was served a two month notice to end tenancy for landlord's use of property. A copy of the notice to end tenancy was not filed into evidence. The tenant stated that the reason for the notice was that the landlord or his family member intended to move into the rental unit. The landlord agreed.

The rental unit consists of eight acres of land with a house and a shop. The tenant rented the house and had the use of two acres. The landlord retained the shop for his use. The landlord stated that he lives in Fort St. James and runs his own business. He also stated that his business takes him to Prince George where the rental unit is located. While in Prince George, the landlord occupies the shop. The tenant did not dispute this.

The landlord stated that due to the increase in his business activities, he was required to spend more time in Prince George. Due to the lack of modern amenities in the shop, he decided to retain the main house for his use while in Prince George. On June 21, 2011, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The tenant did not dispute the notice, received compensation in accordance with s.49 and moved out on August 15, 2011.

The tenant also received an additional rent free month which he stated was compensation for events that occurred during the tenancy that caused the tenant to lose the use of a portion of the rental unit.

The landlord stated that since September 01, 2011, he has used the rental unit whenever he is in Prince George on business trips. The landlord provided a copy of his calendar showing the dates he was in Prince George. The landlord also filed utility bills including bills for an internet connection at the rental unit. The landlord stated that he continues to occupy the rental unit when in Prince George. The landlord agreed that on January 12, 2012, he listed the home for sale, but as of the date of the hearing March 15, 2012, he continued to use the rental home for his own use and has not rented it out to new tenants.

Analysis

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six 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, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit. Based on the testimony and documentary evidence of both parties, I find that the landlord has possession of the unit and currently occupies the unit for his own use. The landlord has not rented the unit out to new tenants.

Therefore I find that the landlord used the unit for at least six months after the tenant moved out and continues to use it, for the purpose stated on the notice to end tenancy. Accordingly, I find that the tenant has not proven his case and I dismiss his application without leave to reapply. The tenant must also bear the cost of filing this application.

Conclusion

The tenant's application is dismissed in its entirety.

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 15, 2012.

Residential Tenancy Branch