



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that he and his wife were handed a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) by a representative of the landlord on August 18, 2011. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 8, 2012. I am satisfied that the parties served these documents to one another in accordance with the *Act*.

The tenant confirmed that he had received a copy of the landlord's written evidence package. The tenant said that he only sent the landlord copies of a "To Whom it May Concern" letter and copies of document the landlord already had in his possession (e.g., the Residential Tenancy Agreement; the 2 Month Notice). He testified that he did not provide the landlord with a copy of the additional written (and photographic) evidence he submitted late to the Residential Tenancy Branch (RTB). He incorrectly maintained that it was the responsibility of the RTB to forward this evidence to the landlord. As the tenant has not sent the landlord a copy of his late evidence, I have not considered that evidence.

Issues(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double his monthly rent pursuant to section 51(2) of the *Act* for the landlord's alleged failure to accomplish the stated purpose of the 2 Month Notice within a reasonable period after the effective date of that Notice?

Background and Evidence

This periodic tenancy commenced on March 1, 2010 when the tenant and his wife rented this rental home from the previous owner of this property. Monthly rent was set

at \$1,100.00, payable in advance on the first of each month. The parties agreed that the previous landlord returned the tenant's \$550.00 security deposit paid by the tenants on February 27, 2010.

Shortly after the respondent purchased the property, they issued the tenants the 2 Month Notice. This required the tenant(s) to vacate the premises by October 31, 2011. The parties agreed that the tenants vacated the rental property by October 31, 2011. The parties agreed that the tenants were allowed to withhold one month's rent pursuant to section 51(1) of the *Act* as a result of the landlord's issuance of the 2 Month Notice.

This application resulted from the tenant's allegation that the landlords did not move into the rental unit until May 2012. The tenant applied for a monetary award pursuant to section 51(2) of the *Act* due to the landlord's delay in moving into the premises.

Analysis

I first note that I have found no reference in the *Act* to the following statement included in the landlord's July 5, 2012 written evidence in which he submitted the following:

The "Residential Tenancy Act" wrote:

"The landlord who can demonstrate an honest intent to occupy, renovate, convert or demolish at the time the Notice was issued has a valid defense against the claim for compensation."

As I was unable to find any such reference in the British Columbia *Act* to such a provision, I asked the landlord to clarify the source of this wording. The landlord was unable to identify any reference for the above wording. In the absence of any such information from the landlord, I find that the relevant legislative provisions are set out in section 51(2) of the *Act* which reads in part as follows:

51 (2) *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,

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...

Section 51(2) of the *Act* does not require a landlord to move into the former rental premises in order to avoid paying a monetary award equivalent to double the monthly rent payable under the tenancy agreement. Rather, the landlord need only take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. The landlord also needs to use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The legislation does not limit the issuance of a 2 Month Notice to those whose stated purpose is to use the premises as a principal residence.

In the case of a landlord who has purchased a rental property to be used as his or her principal residence, the test for the use for the stated purpose is relatively straightforward. However, for those landlords whose stated purpose is to use the premises as a vacation home/secondary accommodation or some other purpose other than their principal residence, the test becomes less straightforward. A landlord planning to use a former rental property as a vacation home may only intend to live in that property on a seasonal or even occasional basis. This type of occupancy may often result in an intermittent record of residence, especially for those landlords employed in other communities. Direct family and extended family or friends may occasionally use this type of property in addition to the landlords.

In this situation, the landlord gave undisputed sworn testimony and written evidence that his stated purpose in issuing the 2 Month Notice was to use the premises as a “vacation home” at some distance from his principal residence in Calgary. He and his wife continue to work in Calgary and his children attend post-secondary institutions there. I find that the landlord’s use of the former rental property as a vacation home (i.e., a second residence) would not lead to the landlord’s permanent occupancy of the premises on a year-round basis.

The question before me reduces to whether the landlord’s transition to using this former rental property as a vacation home began within a reasonable period after the October 31, 2011 effective date of the 2 Month Notice and whether it continues.

Based on a balance of probabilities, I accept the landlord’s oral and written evidence demonstrating that he and his wife did start the process to use the premises as their vacation home shortly after the tenancy ended on October 31, 2011. The landlord gave undisputed evidence that he stayed in the residence during the first two weeks of November 2011, at which time he and his wife purchased and planted new trees and shrubs. He gave undisputed testimony that he returned to the vacation home for three days commencing on February 18, 2012. He submitted written evidence confirming his intent to return to the property in March 2012 with furniture that he and his wife had

purchased. When this furniture did not arrive on time, he delayed his return to the home until early April 2012 when he spent four or five days in the residence. He testified that he returned for another four or five days at the end of April 2012. By early May 2012, he said that almost everything he and his family needed in this vacation home was in place. He had visitors in the house for some time over the summer and plans to return for two weeks on August 14, 2012. He entered written and photographic evidence to support his description of the process he and his family have followed in using the premises as their vacation home.

The tenant is correct in noting that there were significant gaps during the months following the end of his tenancy when the landlord and his family were not living in the tenant's former rental unit. With the exception of the first two weeks of November 2011, I also recognize that the landlord undertook a somewhat slow and prolonged process to use the premises for his stated purpose. However, as noted above, the *Act* does not require a landlord to "move in" to the rental unit as the tenant claimed in his application for dispute resolution. There is no evidence to call into question the landlord's claim that he had no intention of using this former rental home as his principal residence when he issued the 2 Month Notice.

Under these circumstances, I find that the landlord has taken steps to accomplish his stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice. Although this process was punctuated by significant periods when little action was occurring, this process commenced shortly after the landlord gained vacant possession of the rental unit in early November 2011. The intermittent pattern of occupancy is one that appears consistent with the landlord's intention to limit the use of the property to that of a vacation home and not a place of continuous and permanent residence. This intermittent pattern of use for the stated purpose that initiated the 2 Month Notice is continuing. For these reasons, I dismiss the tenant's application for dispute resolution without leave to reapply as I find that the tenant is not entitled to compensation pursuant to section 51(2) of the *Act*.

Conclusion

I dismiss the tenant's 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: August 08, 2012

Residential Tenancy Branch