



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was an application by the tenant for a monetary order for compensation from the landlord equivalent to double the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Residential Tenancy Act* (Act) and for recovery of this filing fee for this application. The hearing was conducted by conference call; the tenant participated as did the landlord and her husband.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to two months' rent pursuant to section 51 of the *Residential Tenancy Act*?

Background and Evidence

The facts before me are as follows. The rental unit is a house in Ladner. The tenancy began approximately 2 ½ years ago. The monthly rent was \$1,900.00. In March, 2012 the landlord gave the tenant a two month Notice to End Tenancy for landlord's use. The Notice required the tenant to move out on May 31st or June 1st. The original Notice was not submitted, but the tenant submitted a facsimile that the landlord did not dispute was largely accurate, but the actual date on the Notice was not established. The stated reason for the Notice to End Tenancy was that the rental unit will be occupied by the landlord.

The tenant moved from the rental unit on May 31st or June 1st and subsequent to moving she discovered that the rental unit was being advertised for rent. The tenant submitted a copy internet advertisement dated August 20, 2012 that showed the rental unit listed for rent for \$2,400.00 per month. The advertisement stated that the rental unit was available September 1, 2012.. The tenant testified that before the landlord gave her the Notice to End Tenancy the landlord had to expend money for repairs and the landlord told her that the rent for the unit was too low. The tenant said that she believed the Notice was given so the landlord could re-rent the unit for more money.

The landlord confirmed that she advertised the rental unit for rent in August and that it has been re-rented. She testified that she gave the Notice to End Tenancy to the tenant because the landlord genuinely intended to move into the rental unit. She said that as soon as she gave the Notice to the tenant she listed for sale the house that she was then living in, with the intention of moving into the rental unit as soon as the house was sold. The landlord said that the rental unit was in poor shape and it needed work to make it ready to occupy. The landlord testified that she had difficulty selling her house; she reduced the price several times and when it did not sell she advertised the rental unit for rent out of desperation. She has re-rented the rental unit and her house is no longer on the market for sale.

The landlord said that the tenants' claim is unfair and unreasonable and if the tenant receives a monetary award she has no intention of paying it.

Analysis and Conclusion

Section 51(1) of the *Residential Tenancy Act* requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord has not occupied the rental unit, but instead has re-rented it to other tenants.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation sought. It may well be that the landlord genuinely intended to occupy the rental unit, but when it turns out, after the tenant has vacated pursuant to the Notice, that the property has not and will not be used for the stated purpose, the original

intention is irrelevant. The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. More than seven months have passed since the tenant moved out of the rental unit and the landlord has not occupied the unit during that period, save, according to the landlord for a short period when she stored some items at the rental unit. The landlord made improvements to the rental unit and then re-rented it. It has not been used for the purpose for which the notice was given and the landlord acknowledged that she will not be occupying the rental unit. I find that the landlord must pay to the tenants an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The monthly rent payable under the tenancy agreement was the sum of \$1,900.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$3,850.00 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims Court 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: January 15, 2013

Residential Tenancy Branch

