



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary order for compensation for damage or loss in the sum of \$13, 897.00.

All parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the tenant met the burden of proving her claims?

Background and Evidence

The tenant has set out the details of her claim in the Amended Schedule "A". The background set out in the Schedule is that the tenant had been residing in the rental unit since 1994. In 1997 the tenant also began acting as the resident manager for which services a portion of her rent was paid. The tenant held this position for 14 years until her age and arthritis made it difficult for her to perform certain duties.

In or about August 2011 the ownership of the rental building changed with one partner leaving and the current landlords becoming sole owners along with their son. Shortly after this change the tenant's services as manager were terminated. Without the portion of her rent being paid the tenant's rent was now \$850.00 per month.

The tenant says the landlords informed her she would have to sign a new tenancy agreement in which her rent would increase to \$1,200.00 per month. The tenant refused to sign and the tenant claims that the landlords embarked on a crusade to evict her from the rental unit.

In August 2011 the landlords served a 1 Month Notice to End Tenancy for Cause (end of employment). The tenant disputed this Notice and, on September 20, 2011 a Dispute Resolution Officer found, amongst other things, that the landlord "...has not met the

burden of proving that he is not acting with an ulterior motive for ending the tenancy as the landlord's primary motive". The Notice to End Tenancy was cancelled and the rent was confirmed at \$850.00 per month.

The tenant submits that one day after receiving the Decision described above the landlords issued the tenant another Notice to End Tenancy (for landlords' use) in which the landlords stated that their daughter was now taking over the position of caretaker and as such she would be moving into the tenant's rental unit.

On October 26, 2011 this Dispute Resolution Officer found that there was an ulterior motive for ending this tenancy and the second Notice to End Tenancy was also cancelled.

In October 2011 the landlords wrote to the tenant to demand she remove all of her items from the storage shed on her deck. The landlord stated this was due to concerns from the City of White Rock however the tenant says she found this to be untrue. In early 2012 the landlords attempted to get the tenant to agree to a \$350.00 rent increase. The tenant did not agree. The tenant's legal counsel wrote to the landlords to advise them that their constant attempts to evict the tenant were "...wearisome, harassing and hindered..." the tenant from "...peacefully enjoying her rental unit".

On May 23, 2012 the landlords served the tenant with a third Notice to End Tenancy. In this instance the landlords' stated that their son was going to move into the tenant's rental unit. The tenant filed an Application seeking to dispute this Notice and a hearing was held on June 18, 2012.

At the June 18 hearing the tenant states that the landlords' son "...unequivocally testified that he required the Apartment and planned to move into the Apartment as soon as possible." In addition, the landlords gave affirmed evidence that their son planned to move in.

In her written submission the tenant states:

Relying on the testimony from all three Respondents it appeared the presiding officer would award the Respondents with an Order of Possession as early as July 31, 2012. [The tenant] was faced with quickly moving from her residence of 18 years or coming to an agreement with the Respondents. As a result, the parties agreed that Mrs. Phillips would provide possession of the Apartment to the Respondent [the son] by August 31, 2012. The parties agreed that [the

tenant] would receive \$250.00 for moving expenses and not pay the rent for August.

(Identifiers removed otherwise reproduced as written)

The tenant says that in late July 2012 the landlords advised the tenant they would be performing renovations to her deck. The tenant advised that she would require compensation for the loss of use of her deck. The tenant says the landlords refused to pay compensation but they still commenced construction and the tenant lost the use of her deck for the month of August 2012.

The tenant submits that she provided peaceful possession of the rental unit as agreed on August 31, 2012. Three days later the landlord's advertised the apartment for rent at \$1,450.00 per month.

The tenant submits that it is apparent that the landlords' son did not intend to occupy the rental unit and that the only reason for ending this tenancy was to allow the landlords to realize more rent for the unit. The tenant submits that the landlords have "...demonstrated a greedy, callous, oppressive and high handed attitude..." towards the tenant. Further that "...due to their successful crusade..." they now stand to gain \$600.00 per month for the apartment easily recouping any statutory penalty that might be imposed under Section 51 of the *Residential Tenancy Act*.

The tenant submits that she has incurred considerable expense, stress and emotional upset having had to vacate her home of 18 years and she now has to pay a higher rent than she did previously.

With respect to her claim for unjust enrichment the tenant says that near the end of 2010 the bathroom in the apartment was in a serious state of disrepair. The then part owner of the building agreed to provide the tenant with materials to perform a renovation to the bathroom while the tenant supplied the labour. The tenant says she agreed to this arrangement on the agreement with the then part owner that she would reside at the apartment and enjoy the benefit of the renovated bathroom. The tenant and a carpenter friend extensively renovated the bathroom commencing in late 2010 and completing the project in spring of 2011. Shortly after the renovation was complete the tenant says the landlords began their crusade to evict her.

As a result of the "...oppressive and high handed conduct..." of the landlords the tenant seeks a monetary order as follows:

Moving expenses (1,597.00 less offset of \$250.00)	1,347.00
Rent Differential (\$1,450.00 less \$850.00 = \$600.00 rent differential x 12 months)	7,200.00
Rent abatement (deck)	250.00
Filing Fee	100.00
Unjust Enrichment re: renovation	5,000.00
Total	13,897.00

The landlords submit that at the time of the issuance of the final Notice to End Tenancy for landlord's use their son, who is also a part owner in the rental property, was intending to move into the rental unit. The landlords' son, JH, attended the hearing and testified that he was in Hong Kong at the time of the issuance of the Notice to End Tenancy intending to return to Canada to resume work and manage the rental building. JH testified that his work can be performed from any location although the employer's head offices are in India. JH testified that prior to returning to Canada he travelled to India to meet with his employer. JH testified that doing business in India is unlike doing business anywhere else in the world and having arrived in India he learned that his plan to continue his employment in Canada was in jeopardy. JH testified that he remained in India for some time trying to ascertain his future with the company and he eventually learned that the company had changed tack and did not want employees working remotely from Canada any longer. In order to save his career JH was obliged to remain in India.

Agent for the landlords submitted that the matter of the end of this tenancy was settled by way of a mutual agreement between the parties which was recorded by the Dispute Resolution Officer on June 18, 2012. In that Record of Settlement the tenant agreed to vacate and accept two months' rent free, a \$275.00 payment, and an additional payment of \$250.00 towards her moving expenses. Agent for the landlords submits that this was the end of the matter. Agent for the landlord surmised that if any compensation was to be payable at all it could only be that which is set out in Section 51(2) of the *Residential Tenancy Act* which states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) if a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

However, as the matter ended by way of a mutual agreement, agent for the landlords submits that even this even this Section does not apply.

Analysis

I agree with the landlords. This matter was settled by way of a mutual agreement between the parties. The tenant agreed to vacate in exchange for which she agreed to accept two months rent free, a contribution toward moving expenses of \$250.00, a payment of \$25.00 towards her filing fees and a further unidentified \$275.00 payment. I note that the tenant was accompanied by her lawyer at the hearing when she agreed to these terms. The tenant now argues that she based her agreement on the landlord's son's testimony that he was moving into the rental unit. However, having successfully disputed such claims in the past I must question: Why would the tenant have believed the landlords now? In fact it is noted in the Decision that the tenant's legal counsel did question the "...good faith intent of the landlord in this regard" although they clearly chose to agree to settle. The tenant also says she felt compelled to settle because "...it appeared..." the Dispute Resolution Officer would issue the Order of Possession. There is nothing in the Decision/Record of Settlement to suggest what the Dispute Resolution Officer was thinking and, given the record of previous unsuccessful attempts to evict the tenant for the same cause it is equally likely that the landlords would not have been successful on this occasion as well.

As to the suggestion made by the landlords' agent that the only compensation that may be at issue is that the tenant might be entitled to Section 51(2) compensation that

claims is not before me. I will therefore make no finding in this regard and I dismiss the tenant's claims for:

Moving expenses (1,597.00 less offset of \$250.00)	1,347.00
Rent Differential (\$1,450.00 less \$850.00 = \$600.00 rent differential x 12 months)	7,200.00

In addition, I dismiss the tenant's claim for rental abatement for loss of use of the balcony for the last month of her tenancy. I find that she has failed to bring sufficient evidence to prove her loss in this regard. In addition, as her claim for this loss is \$250.00 a sum fairly equal to the unidentified sum of \$275.00 paid in the settlement terms and it may be that this loss, if any, has already been compensated.

With respect to the tenant's claim of unjust enrichment arising from the bathroom renovation, the evidence is that the landlord supplied the materials and the tenant did the work. The tenant stayed on to enjoy the bathroom for sometime afterwards and I find that there has been insufficient evidence to show that as a result of the bathroom renovation it was agreed that the tenant's tenancy would continue on any longer than it would have done in the circumstances.

Conclusion

The tenant's applications are dismissed in their 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: February 05, 2013

Residential Tenancy Branch

