



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed September 21, 2012: MNDC; FF

Landlord's application filed December 20, 2013: MNR; FF

Introduction

The Tenants' application was convened on December 12, 2012. The Tenants sought compensation under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord. The matter was adjourned to February 8, 2013, and an Interim Decision was provided, which should be read in conjunction with this Decision.

The Landlord filed a cross application on December 20, 2012, seeking a monetary award for unpaid rent and to recover the cost of the filing fee from the Tenant. The Landlord did not serve the Tenants, or provide the Residential Tenancy Branch, with any supporting documentation with respect to this claim.

During the February 8th Hearing, it was determined that the Landlord served the Tenants with his Notice of Hearing documents by registered mail, sent December 20, 2012. However, contrary to my Order of December 12, 2012, the Landlord did not serve the Tenants with certain documents. The Landlord stated that he misread my Interim Decision and Order of December 12, 2012, and did not realize that he had to serve the Tenants with the documents. Both matters were adjourned again and the Landlord was ordered again to serve the Tenant with documents. A second Interim Decision was provided.

Further to my Interim Decisions and Orders dated December 12, 2012, and February 8, 2013, the Landlord served the Tenants with a copy of the Contract of Purchase and Sale dated May 24, 2012. He also provided a copy of a hand written letter from the new owner of the rental property. The Tenants served the Landlord with rebuttal evidence, by registered mail.

The parties gave affirmed testimony at the Hearings.

Issues to be Decided

1. Are the Tenants entitled to compensation in the equivalent of two months' rent?

2. Is the Landlord entitled to a Monetary Order for unpaid for the month of August, 2012?

Background and Evidence

The Tenants moved into the rental unit in May, 1994. The Landlord purchased the property from the Tenant's former landlord on February 12, 2012. Monthly rent was \$1,200.00. The Tenants paid a security deposit to their former landlord in the amount of \$450.00 on May 1, 1994. The security deposit has not been returned to the Tenants. The Landlord stated that the previous owner did not provide him with the Tenants' security deposit. The Tenants stated that they wished to have their security deposit returned.

On May 30, 2012, the Landlord issued a Notice to End Tenancy for Landlord's Use, claiming that, "all of the conditions for sale of the rental unit have been satisfied and the purchase has asked the landlord, in writing, to give this Notice because the purchase or a close family member intends in good faith to occupy the rental unit." The Notice was effective August 1, 2012. The Tenants received due compensation in the equivalent of one month's rent under Section 51(1) of the Act. They now seek compensation in the equivalent of two months' rent under Section 51(2) of the Act.

The Tenants testified that they moved out of the rental unit on August 1, 2012. The Landlord argued that they did not move out until August 20, 2012, and that therefore they owe him rent for the month of August, 2012.

The Tenants stated that the rental unit was demolished on September 13, 2012, by the Landlord's construction company, under a demolition permit that was issued on September 6, 2012. The Landlord stated that he did not know until sometime in July, 2012, that the purchasers were going to demolish the rental unit. He stated that he issued the Notice to End Tenancy in good faith. The Landlord submitted that the purchasers decided to demolish and rebuild, rather than renovate, because they had found asbestos in the rental unit.

The Tenants submitted that prior to issuing the Notice to End Tenancy, the Landlord had initially told them that a potential purchaser wanted to demolish the rental unit and build a new house on September 1, 2012. The Tenants stated that they told the Landlord that they understood that he couldn't give notice until all the permits were in approved. The Tenants stated that shortly after this discussion, they received the Notice to End Tenancy, indicating that the purchasers intended to move into the rental unit.

The Tenants asked the Landlord why he went to the municipal engineering department on June 1, 2013 to file a pre-application to build on the property. The Landlord replied that he wanted to determine where the sewer and water lines were and that a pre-application can be filed for many purposes, such as renovation.

The Tenants asked the Landlord if he had a contract with the purchaser to build on the rental property at the time of selling the rental property and filing the pre-application. The Landlord stated that he didn't have a contract to build prior to selling the rental property and that the property was sold "as is". He stated that he did not have the approval of the purchasers to file a pre-approval application, but that he did it "in case they needed it for renos".

The Tenants stated that the new house is not yet completed and that their copy of the Contract of Purchase and Sale was altered to black out the purchaser's address, so they were unable to contact the purchasers to question them about their building contract with the Landlord's company.

The Tenants submitted that a survey plan must be provided when filing a pre-application for building. They asked the Landlord when a survey was done of the rental property. The Landlord stated that he paid to have a survey done in March, 2012, prior to the sale of the rental property because he wanted to know the size of the property. He stated that he ordered the survey from a private company at the end of March and that it was finished at the end of May, 2012.

Analysis

Regarding the Landlord's application:

I find that the Landlord provided insufficient evidence to establish his claim, for the following reasons:

1. The Tenants provided a copy of their tenancy agreement with their new landlord, which indicates that their new tenancy started on August 1, 2012, with monthly rent of \$2,000.00, due on the first of each month.
2. The Notice to End Tenancy gave an effective end-of-tenancy date of August 1, 2012. The Landlord did not require the Tenants to perform an inspection at the end of the tenancy, contrary to Section 36 of the Act, and therefore could not confirm that the Tenants had or had not moved on August 1, 2013.

I find on the balance of probabilities that the Tenants provided vacant possession of the rental unit on August 1, 2012, and therefore the Landlord's application is **dismissed without leave to reapply**.

Regarding the Tenants' application:

It is important to note that I allowed the Landlord the opportunity to provide a copy of the building contract to me and to the Tenants. I directed that this be done within 5 days of the Hearing. The Landlord has not provided a copy of the building contract to the Branch and the time for doing so has passed. Therefore, I have concluded the Hearing and reached my Decision.

The Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Based on the testimony of both parties, and in the absence of documentary evidence to the contrary (for example, the building contract), I find that the Tenants have provided sufficient evidence that steps were not taken to accomplish the stated purpose for ending the tenancy. I find it probable that the Landlord entered into a contract with the purchaser to demolish the rental unit and therefore knew that the purchaser was not going to move into the rental unit when the Notice to End Tenancy was issued. In any event I find that no steps were taken to accomplish the stated purpose for ending the tenancy under Section 49 of the Act and that the rental unit was never used for the purpose stated for ending the tenancy under Section 49.

Section 51 of the Act states:

Tenant's compensation: section 49 notice

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.

Therefore, I find that the Tenants are entitled to compensation pursuant to the provisions of Section 51(2) of the Act in the amount of **\$2,400.00**.

The Tenants have been successful in their Application for Dispute Resolution and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Regarding the security deposit

A security deposit runs with a tenancy agreement. In other words, when the Landlord purchased the rental property, the security deposit, together with accrued interest, should have been provided for on the Statement of Adjustments. If this was not done, the Landlord's remedy is to seek compensation from the previous owner.

The tenancy is over, the Landlord's application for a monetary order for unpaid rent has been dismissed, and the Landlord's right to claim against the security deposit for damages has been extinguished under Sections 24 and 36 of the Act. Therefore, I find that the Tenants are entitled to return of the security deposit in the amount of \$450.00, along with accrued interest in the amount of \$35.97, for a total of **\$485.97**.

I hereby provide the Tenants with a Monetary Order, calculated as follows:

Compensation under Section 52(2) of the Act	\$2,400.00
Return of the security deposit	\$485.97
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$2,935.97

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$2,935.97** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (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: March 18, 2013

Residential Tenancy Branch

