



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O and FF

Introduction

This hearing was convened on an application made by the tenants on May 28, 2013 seeking a Monetary Order for payment of an incentive offered by the landlords if the tenants' cooperation with efforts to sell the property succeeded. The tenants also sought to recover the filing fee for this proceeding from the landlords.

Issue(s) to be Decided

Are the tenants entitled to an order for payment of the incentive?

Background and Evidence

This tenancy began on April 6, 2011 under a two-year fixed term tenancy agreement, subsequently extended for an additional six months. Rent is \$6,200 per month and the landlords hold a security deposit of \$3,100 paid at the beginning of the tenancy.

The rental unit has been sold and the tenants will be vacating on September 30, 2013 pursuant to a Notice to End Tenancy for landlord use issued by the new landlord who took possession on June 7, 2013.

During the hearing, the applicant tenant gave evidence that, as she and her partner were both extremely busy entrepreneurs, they had emphasized in a pre-signing meeting with the landlords that quiet enjoyment was of paramount importance to them.

The attending tenant stated that the landlords had responded to their specific enquiries by giving assurance that the property was in good repair and no extraordinary servicing was anticipated, and they had no expectation of selling.

The attending landlord stated that no such assurance had been given; the 100 year old house would obviously require some servicing from time to time and one can never anticipate when a change in circumstance may create the need for a sale.

Nevertheless, the parties signed the two-year fixed term agreement which would have extinguished the landlords' right to issue a normal notice to end tenancy to accommodate a sale for vacant possession before the end of the fixed term.

As it happened, the landlords did list the property for sale on January 2, 2012 and again in January and February 2013 with attendance of appraisers, bankers, etc. consequent to an offer to purchase continuing until April 2013.

During the hearing, the tenant submitted a copy of an email from the landlord, KN, sent on May 15, 2012 which stated that, "As a friendly gesture to show our appreciation to you on allowing buyers to see the house, we would like to offer you a token which is the equivalent to half of the monthly rental upon the completion of the transaction should our house be successfully sold within the period of your tenancy."

A further email of June 17, 2012 from the landlords stating, in part, that, "we would like to clarify that we meant for our token of appreciation is half a month's rent which is \$3,100 if the property is sold during your tenancy."

The attending tenant gave evidence that she alone had accommodated 21 viewings of the property – often waiving the required 24-hour notice - and had not counted those arranged by her partner while she was away.

She also submitted emails from realtors expressing their appreciation for the hospitable manner in which they had been received and the presentable state in which they had found the property. The gardener, too, had expressed his approval of their upkeep of the grounds.

The attending landlord stated that the compliments and expressions of gratitude were simple exercises in diplomacy common to maintaining smooth relationships in business.

One such email came from a realtor on February 8, 2013 expressing her appreciation for a showing arranged the following day for a party the tenant believes was the purchaser.

On February 10, 2013, the tenant received an email from the attending tenant's husband stating that, "There is no reason for us to offer you an incentive to motivate you to be cooperative. The incentive offered by [his wife KN] in her email to you has been removed effective last Friday."

The attending landlord stated that the landlords had some cause for concern that the tenants had disparaged the property before prospective purchasers because they had been interested in purchasing the property themselves. The tenant stated she had never discouraged a purchaser but had noted a deficiency privately to the listing realtor on the belief the landlords would want to be aware of it. The parties had experienced some disagreements as the tenants grew weary of the showings continuing much longer than expected.

Analysis

The landlord challenged jurisdiction in this dispute as she stated the agreement to pay the incentive was outside of the rental agreement. I must disagree.

I accept the evidence of the tenant that they had emphasized the importance of quiet enjoyment and had received some confirmation from the landlords in signing a two-year fixed term agreement which would greatly hinder or completely preclude an intention to sell.

I further accept the evidence of the tenant that arranging for and accommodating showings was a major disruption in the tenants' preferred activities and that they accommodated the landlords' wishes well beyond the rights granted to the landlords under section 29, of the *Act*. They had found some consolation in the landlords' promise to grant them the half month's rent as an incentive.

In fact, the property did sell, and as expressed in the realtor's email of February 8, 2013, the tenants' facilitated that sale as they had promised. I find that the parties had agreed to exchange the incentive for the tenants' sacrifice of quiet enjoyment which is indeed part of any rental agreement and specified at section 28 of the *Act*.

Therefore, I find that the landlords must pay the \$3,100 as promised.

As the application has succeeded on its merits, I further find that the tenants are entitled to recover the filing fee for this proceeding from the landlords

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Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$3,150.00 for service on the landlords.

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: September 05, 2013

Residential Tenancy Branch

