



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 the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch on November 13, 2013. The Landlord stated that copies of these documents were mailed to the Tenant on November 13, 2013. The Tenant stated that she has not yet received those documents.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. Documents mailed on November 13, 2013 would be deemed received on November 18, 2013. As the Tenant has not acknowledged receipt of the documents that were mailed on November 13, 2013 and they were not served in accordance with the timelines established by the Rules of Procedure, I decline to accept the documents as evidence. The Landlord was advised that she can introduce any of the documents orally.

The Tenant submitted documents to the Residential Tenancy Branch on October 16, 2013. The Tenant stated that copies of these documents were mailed to the Tenant on October 16, 2013. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2010; that it ended on July 01, 2013 or June 30, 2013; and that during the latter portion of the tenancy the Tenant was obligated to pay monthly rent of \$1,250.00 by the first day of each month.

The Tenant and the Landlord agree that on May 05, 2013 the Tenant was personally served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*. The Notice indicated that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. The Notice indicated that the Tenants must vacate the rental unit by July 13, 2013. A copy of the Notice to End Tenancy was submitted in evidence.

The Landlord and the Tenant agree that sometime in the middle of May the Landlord informed the Tenant that she no longer intended to move into the rental unit and that the Tenant did not have to vacate. The parties agree that the Tenant informed the Landlord that she would consider staying but that the Tenant subsequently informed the Landlord, via email, that she would be vacating at the end of June.

The Landlord stated that when she served the Notice to End Tenancy she intended to move into the rental unit; that she did not move into the rental unit as she needed to care for her mother and that the rental unit is currently occupied by a person who is not a close family member.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay monthly rent of \$1,250.00 at the end of this tenancy; that on May 05, 2013 the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*; that the Notice indicated that the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit; and that the Landlord or a close family member of the Landlord did not move into the rental unit after it was vacated by the Tenant.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As I have found that the Landlord or a close family member of the Landlord has not taken reasonable steps to move into the rental unit and/or has not occupied the rental unit for a period of at least six months, I find that the Landlord must pay the Tenant \$2,500.00, which is the equivalent of double the monthly rent.

In making this determination I acknowledge that the Landlord did attempt to withdraw the Two Month Notice to End Tenancy upon determining that she would not be moving into the rental unit, however there is nothing in the *Act* that permits a Landlord to withdraw a Notice to End Tenancy once it is served. Residential Tenancy Branch Policy Guidelines stipulate that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy without the consent of the party to whom it is given and in these circumstances the Tenant clearly did not agree to allow the Landlord to withdraw the Notice. I therefore find that the Tenant is entitled to compensation pursuant to section 51(2)(a) of the *Act*, even though I do not find that the Landlord acted deceptively.

Conclusion

I find that the Tenant has established a monetary claim of \$2,500.00 and I grant the Tenant a monetary Order for this amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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: November 21, 2013

Residential Tenancy Branch

