



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$2,600.00, equivalent to 2 month's rent, pursuant to section 51 of the Act?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

The parties confirmed that a 1 year fixed-term tenancy commenced on August 15, 2013. At the end of the fixed-term the tenancy agreement was to convert to a month-to-month term or the parties could agree to enter into another fixed term agreement. Rent was \$1,300.00 per month.

On June 14, 2014 the landlord issued a 2 month Notice ending tenancy for landlord's use of the property. The Notice was effective August 14, 2014. The Notice gave the reasons that the unit would be occupied by the landlord or a close family member.

The tenants gave 10 days' Notice and vacated the unit June 30, 2014. The appropriate compensation was paid.

The parties confirmed that the landlord had no intention of occupying the unit; the unit was immediately listed for sale and was sold within a matter of days. The tenants supplied copies of the listing.

The landlord said that the tenants had always known the property would be placed for sale and that the landlord had agreed not to list during the fixed term period of the tenancy. The agent stated that perhaps she had misunderstood the requirements of the Act and accepted responsibility for any error in process.

Analysis

Section 51 of the Act provides, in part:

(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 reason given on the Notice did not relate the reason the landlord wished to have vacant possession of the unit. It does not matter if the tenants had always known the unit would be sold; what is critical is the requirement of the legislation. If the landlord had intended to sell the unit they were free to do so during the fixed term; in which case possession by the purchaser could take effect no earlier than the last day of the fixed term. Proper Notice could be given, once the purchase was finalized and written notice was provided that the purchaser intended to occupy the unit.

The fact that the landlord promised not to list the unit during the 1st year of the tenancy does not relieve the landlord from the obligations of the legislation. A party may not contract out of the Act.

I find that the Notice issued on June 14, 2014 was issued based on a reason that was never intended to occur. The landlord had no intention of possessing the unit and every intention of selling; which is what occurred. This was not disputed. Therefore, I find, pursuant to section 51(2) of the Act, that the tenants are entitled to compensation equivalent to double the monthly rent; \$2,600.00.

I find that the tenant's application has merit and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$2,650.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The agent for the landlord testified that she wishes to accept responsibility for any cost incurred as a result of the Notice issued. The tenants did not agree that the agent should pay; however she has offered to do so. As the tenant's objected I have issued the Order in the name of both respondents and the agent will be free to ensure payment is made.

Conclusion

The tenants are entitled to compensation in the sum of \$2,600.00.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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 08, 2015

Residential Tenancy Branch

