



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was an application by the tenant for compensation from the landlord equivalent to double the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Residential Tenancy Act* (Act). The hearing was conducted by conference call; the tenant and her husband attended the hearing. The landlord did not attend, but based upon his written submission acknowledging that he received the tenant's application for dispute resolution and Notice of Hearing, I find that the landlord has been sufficiently served with the application and Notice of Hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to two months' rent pursuant to section 51(2) of the Act?

Background and Evidence

The rental unit is a ground floor suite in the landlord's house in Burnaby. The tenancy began in September, 2013. There is no written tenancy agreement. The initial monthly rent was \$775.00. The tenant testified that the rent was increased to \$800.00 per month beginning January, 2014. The tenants accepted the increased rent without protest. According to the tenant the rent increase was related to increased utility costs.

On April 1, 2014 the landlord served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice required the tenant to move out by May 31, 2014. The ground for the Notice to End Tenancy was that the rental unit would be occupied by the landlord, or a close family member. The landlord told the tenants that his parents would be moving into the rental unit. The tenants moved out of the rental unit at the end of May. The tenant testified that she returned to the rental property to pick up mail in July, 2014 and spoke to the landlord's wife. The landlord's wife told her that someone else

was renting the ground floor rental unit. The tenants have learned that the rental unit was never occupied by the landlord's parents, but it was rented to new tenants commencing in July, 2014 and that it continues to be rented to the same tenants as of the date of the hearing.

Analysis

Section 51(1) of the Act requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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 applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord has not used the rental unit for the stated purpose for ending the tenancy, but instead has re-rented the unit to new tenants.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation sought. It may be that the landlord may have intended to provide the rental unit to a close family member, but when it turns out, after the tenants have vacated pursuant to the Notice, that the property has not and will not be used for the stated purpose, the original intention is irrelevant. The Act provides that compensation is payable, regardless of intention, if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. The landlord has not used the property for the stated purpose and it has been re-rented to new tenants for the past eight months. I find that the landlord must pay to the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

The monthly rent payable under the tenancy agreement was the sum of \$800.00. The tenant is entitled to an award of double the rent in the amount of \$1,600.00 and I grant the tenant an order under section 67 in the said amount. No filing fee was paid for this application. This order may be filed in the 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: February 27, 2015

Residential Tenancy Branch

