



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Specifically, the tenants seek compensation equivalent to two months' rent pursuant to subsection 50(2) of the Act.

The landlord appeared and confirmed service of the tenants' dispute resolution package and evidence. The landlord confirmed that he had the opportunity to review all the tenants' evidence. The tenant MM (the tenant) appeared and confirmed she had authority to act on behalf of the tenant AM. The tenant confirmed that she had the opportunity to review all of the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation equivalent to two months' rent pursuant to subsection 50(2) of the Act? Are the tenants entitled to recover their filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began in or about October 2010. The tenancy ended 31 May 2014. At the end of the tenancy, monthly rent was \$1,889.00.

On 30 March 2014, the landlord issued a 2 Month Notice to End Tenancy for Landlord Use (the 2 Month Notice). The 2 Month Notice set out that it was given as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse".

On or about 25 November 2014, the tenants sent a demand letter to the landlord. The tenants demanded compensation in the amount of two months' rent for the landlord's failure to use the property for the stated purpose within a reasonable amount of time and for a minimum of six months.

The tenants provided four letters from occupants of properties surrounding the rental unit. Each letter set out that the occupant observed the rental unit to be vacant. The tenants provided photographs of the exterior of the rental unit. The window coverings are drawn and there are no cars parked at the rental unit.

The tenant testified that a neighbour told her that the landlord told the neighbour that the power was cut to the property because the landlord intended to demolish the house and build on the site.

The tenant testified that sometime in late January or early February the rental unit was demolished. The landlord confirmed this.

The landlord testified that shortly after the tenants vacated the rental unit he moved his possessions into the home. The landlord testified that he moved in tables and chairs. The landlord testified that he never moved a bed into the rental unit. The landlord testified that he never slept in the rental unit. The landlord testified that he used the house in the way that one uses a house that one owns. The landlord testified that he had sole possession of the rental unit. The landlord testified that he would go to the rental unit from time to time to check on the rental unit.

The landlord provided written submissions:

Attached we have included what we feel is sufficient evidence to identify a place of residency. According to documentation required by Elections BC to vote, see attached "Voters must prove their identity and residential address to receive a ballot or register to vote in conjunction with voting". Elections BC require ONE piece of ID with the voters address; this may consist of a utility bill. Therefore, we feel the same documentation should be acceptable for the Residential Tenancy Branch of BC as proof of residency. Please find enclosed TWO letters from utility companies, BC Hydro and Fortis Gas, as proof of residency.

The landlord provided two letters from utility companies stating that accounts existed in the landlord's name.

The tenants seek a total monetary order of \$3,828.00:

Item	Amount
Subsection 51(2) Compensation	\$3,778.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$3,828.00

Analysis

Pursuant to subsection 49(3) a landlord may end a tenancy by providing a 2 Month Notice where:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit...

The landlord gave a 2 Month Notice pursuant to this provision.

Subsection 51(2) provides for compensation if the landlord did not use the rental unit for the stated purpose:

- (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 central issue in this dispute is whether or not the landlord's conduct in respect of the rental unit went so far as to show the landlord did "occupy" the rental unit.

"Occupy" and its derivations are used repeatedly throughout the Act (see for example sections 1, 48, 54, 57, and 59). In each case, "occupy" is used to mean that a party lived or resided in that place. This definition agrees with interpretation set out in *Residential Tenancy Policy Guideline*, "2. Good Faith Requirement when Ending a Tenancy":

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* allow a landlord to end a tenancy if the landlord intends in good faith to:...

- o move in themselves, or allow a close family member to move into the unit; ...
[footnotes removed; emphasis added]

In this case, the landlord testified that he moved in a table and some chairs into the rental unit. The evidence provided by the landlord shows that he had utility accounts in his name for the rental unit; however, the documents do not show that the landlord lived in the rental unit. Further, the evidentiary requirements of another governmental agency, while instructive, are not

binding on this Branch. By the landlord's own admission he did not move in a bed into the rental unit and did not sleep one night there. I find that this level of use does not satisfy the requirement of "occupy" pursuant to subsection 49(3). I find that the rental unit was left vacant until such time it was demolished.

The rental unit is now destroyed and thus incapable of being occupied. Accordingly, I find that the landlord failed to occupy the rental unit within a reasonable time as required by the Act. As the landlord failed to use the property for its stated purpose within a reasonable time period for doing so, the tenants are entitled to compensation equivalent to two months' rent.

As the tenants have been successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,828.00 under the following terms:

Item	Amount
Subsection 51(2) Compensation	\$3,778.00
Recover Filing Fee	50.00
Total Monetary Order Granted	\$3,828.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: April 27, 2015

Residential Tenancy Branch

