



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 15, 2015 seeking to cancel an eviction Notice issued landlord's use of the property. The application was amended on January 16, 2015, removing the request to cancel the eviction and adding a request to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement in the amount of \$2,000.00.

The hearing was conducted via teleconference and was attended by both Landlords and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony. The Tenant submitted that she served the Residential Tenancy Branch (RTB) with copies of the same documents she served each Landlord. Each Landlord acknowledged receipt of evidence served by the Tenant and no issues were raised regarding service or receipt of that evidence. The Landlords did not submit documentary evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a monetary award for compensation under the Act, regulation or tenancy agreement?

Background and Evidence

The undisputed evidence was the Tenant entered into a written fixed term tenancy agreement that began on January 1, 2014 and was scheduled to switch to a month to month tenancy after December 31, 2014. Rent of \$1,000.00 was due on or before the

first of each month and on December 13, 2013 the Tenant paid \$500.00 as the security deposit.

The Tenant testified that she was served a 2 Month Notice to end tenancy on October 7, 2014 listing an effective date of January 1, 2015. A copy of the 2 Month Notice was submitted in the Tenant's evidence indicating the reason for issuing the Notice as follows:

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
[Reproduced as written]

The Tenant asserted that the Landlords tried to have her sign a document stated that the eviction was invalid and that she refused to sign anything once she received the 2 Month Notice. The Tenant argued that the Landlords simply re-rented the unit to new tenants and not relatives. Therefore, she now seeks compensation equal to two months' rent because the unit was not used for the reason why she was evicted.

The Landlords testified that that they had originally planned to have the male Landlord's mother move into the rental unit; however, when the Tenant refused them access to the unit with a contractor to conduct renovations, they changed their plans and re-rented the unit. They confirmed that they had re-rent to the unit to a non-family member who moved in the same day the Tenant moved out on January 1, 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 51(2) of the Act provides that if 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 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In regards to the Tenant's claim for \$2,000.00, (2 x \$1,000.00) pursuant to section 51(2) of the *Act* as listed above, I find the undisputed evidence confirmed that the rental unit had not been used for the reasons stated on the Notice within six months of the Tenant being evicted. Rather, the rental unit was used as follows:

Notwithstanding the Landlord's submission that their plans changed when the Tenant refused them access to the rental unit, the undeniable evidence is the Tenant was evicted effective January 1, 2015 and a non-family member, the new tenant, moved into the rental unit January 1, 2015. A family member of the Landlords has never occupied the rental unit during the last six months.

Based on the above, I conclude that the Tenant has met the burden to prove that 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, and the rental unit was not used for that stated purpose for at least 6 months. Accordingly, I grant the Tenant's application and award her **\$2,000.00**.

Conclusion

The Tenant was successful with her application and was awarded \$2,000.00.

The Tenant has been issued a Monetary Order for **\$2,000.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the British Columbia 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: July 31, 2015

Residential Tenancy Branch

