



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for the landlord to comply with the *Act*, regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord provided late evidence that was not submitted within the allowable time frame and was only received by this office on August 10, 2016 and by the tenant on August 12, 2016. The landlord was permitted to provide additional evidence after the hearing had concluded in the form of utility bills.

Procedural issues -In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 7 days prior to the hearing, and in this case, the landlord did not. In considering whether to accept the landlord's documentary evidence, I find that the landlord delayed in sending their evidence and have provided no proof that they served the tenant the entire package of their evidence; I have therefore excluded the landlord's evidence with the exception of the additional

documentary evidence in the form of utility bills I asked the landlord to produce after the hearing had concluded.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agreed that the tenant first moved into this basement rental unit in July 2010 when the property was owned by the previous landlord. The parties entered into a new fixed term tenancy on July 01, 2012 which was due to expire on June 30, 2014. Rent for this unit was \$1,790.00 per month due on the first of each month. The matter of the security deposit has been dealt with by the parties.

The tenant testified that the landlord had served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) in person on April 30, 2014. The reason provided on the Notice was that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Notice had an effective date of July 01, 2014.

The tenant testified that when she was served the Notice she was informed that the landlord intended to occupy the entire house and therefore the tenant needed to move out. The tenant found alternative accommodation and provided the landlord with written notice to end the tenancy early. The tenant vacated the rental unit on June 01, 2014.

The tenant testified that when she was driving past the unit she saw a For Sale sign outside the unit and determined that the landlord had listed the unit on June 10, 2014

just 9 days after the tenant vacated. The tenant testified that it was clear to her that the landlord's intent was to sell the home and not to live in the unit.

The tenant testified that she sent the landlord a letter on July 14, 2014 outlining his responsibilities under the *Act* and if the landlord did not honor the reason given on the Notice and move into the unit that he must pay the tenant compensation equivalent to two months' rent. In August the tenant received a phone call from someone claiming to be a friend of the landlord who became menacing and rude and told the tenant she was being unreasonable and that the landlord was not going to pay her anything. The tenant testified that later on she found out that the property had been demolished and a new home has been built on the land.

The tenant seeks an Order for the landlord to comply with the *Act* and pay the tenant compensation because they did not use the unit for its intended purpose. The tenant also seeks to recover the filing fee from the landlord.

The landlord disputed the tenant's claims. The landlord's agent testified that they had not been made aware of a rude conversation from a friend to the tenant and for that the landlord apologized. The landlord's agent testified that the landlord did move into the property on or about June 05, 2014. The only reason the house was put up for sale was to determine the value of the house, although the landlord had no intention of selling it. The landlord lived in the house from June 05 to December 02, 2014 when the house was demolished. Since that time the landlord has built a new house on the land and the whole family moved in with the landlord on January 24, 2016.

The tenant referred to the MLS listing for the property which stated it was listed on June 10, 2014 until September 10, 2014 and the listing also stated it was listed as vacant occupancy.

The landlord's agent testified that the landlord lived in the whole property until it was demolished and the house was taken off the market on July 18, 2014. The property was

only listed as vacant to encourage purchasers to make an offer so the landlord could determine the value of the home. The landlord's agent testified that while the landlord lived in the home he had the utilities in his name and no one lived in the basement unit other than the landlord.

After the hearing had included, the landlord provided copies of some utility bills for the period he claimed to reside in the property. In written submissions with this additional evidence, the landlord writes that he has provided gas and hydro bills and an invoice from an environmental service company which shows the landlord moved out of the property around mid-November as the property was prepared to be demolished on December 02, 2014.

Analysis

I refer the parties to s. 51(2) of the Act which states:

(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.

It is not the matter of what the landlord's true intent was when he served the tenant with the Two Month Notice, as the tenant's opportunity to dispute the Two Month Notice has since passed. The question I am looking at is whether or not the landlord actually

occupied the unit within a reasonable period and whether or not the landlord lived in the rental unit for a period of at least six months after he took possession.

During the hearing the landlord's agent testified on behalf of the landlord and stated the landlord moved into the unit on June 05, 2014 and vacated the unit on December 02, 2014. After the hearing the landlord provided additional submissions and copies of gas and hydro bills and stated the landlord vacated mid-November. The Hydro bills run from June 07 to December 05, 2014 and the gas bills run from May 08 to November 07, 2014 and do not provide definitive proof that the landlord continued to reside in the property.

The landlord has also provided an invoice from an environmental company who went into the property in November, 2014 to remove asbestos from the property in preparation for the property being demolished. This invoice along with the landlord's written submissions clearly show that the landlord vacated the property sometime in November, 2014 and the last gas reading provided for the property shows the last reading was taken on November 07, 2014. I also find this evidence is contradictory to the evidence provided at the hearing.

From the evidence presented I am not persuaded that the landlord used the rental unit for the stated purpose as provided on the Notice for a period of at least six months as the landlord's occupation of the property ended sometime between November 07 to mid-November, 2014 which falls short of the six months required under s. 51(2) of the *Act*.

Consequently, I am satisfied that the tenant has established a claim to recover compensation equivalent to two months' rent and will receive a Monetary Order to the amount of **\$3,580.00** pursuant to s. 67 of the *Act*.

As the tenant's claim has merit I also find the tenant is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,630.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 16, 2016

Residential Tenancy Branch