



Dispute Resolution Services

Page: 1

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 tenants' 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 tenants and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that the tenants moved into this upper rental unit on November 15, 2014 and the parties entered into a written agreement for a fixed term tenancy which

was due to expire on December 01, 2015 with the option of continuing as a month to month tenancy. Rent for this unit was \$1,700.00 per month due on the first of each month.

The tenant RH testified that the landlord had served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) in person on October 31, 2015. 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 December 31, 2015.

The tenant testified that when they were served the Notice the landlord still had the house up for sale but they were told he landlord was going to move into the rental unit. The tenants found alternative accommodation and provided the landlord with notice to end the tenancy early. The tenants vacated the rental unit on December 15, 2015.

The tenant testified that when they were driving past the unit they could see that the landlord was not living in the unit. The downstairs tenant was still living in their unit and they learnt that the landlord had received three offers on the property. The tenants testified that in January, 2016 the landlord sold the property and the downstairs tenant was also given notice to end their tenancy. The tenant testified that they spoke to the new owners and were told the upper unit was vacant when they had viewed and purchased the home. The tenant testified that it was clear to them that the landlord's intent was to sell the home and not to live in the unit.

The tenant testified that as the landlord did not move into the property in a reasonable time frame after the effective date of the Notice and did not occupy the unit for a minimum of six months, the tenants seek compensation equivalent to two months' rent.

Further to this the tenants seek compensation of \$5,000.00 for the undue stress and mental anguish this move caused to the tenants and their children.

The tenants seek 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 tenants' claims. The landlord testified that she did intend to move into the unit as she could not afford to keep the property and rent a unit elsewhere. The landlord testified that she had given notice on her own rental unit effective on January 31, 2016 and intended to occupy the unit after that date. The landlord agreed that the house was kept on the market and an offer was accepted for the house on January 04, 2016. The subjects were removed on January 14, 2016 and the new owners took possession on January 29, 2016. The new owners then served the downstairs tenant with a Two Month Notice.

The landlord testified that it was her intention to continue to try to sell the house while she lived in it but it sold quickly before she could move in.

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 she served the tenants with the Two Month Notice, as the tenants' 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 the tenants vacated.

From the evidence presented it is clear that when the Notice was served upon the tenants the landlord continued to market the unit for sale and that despite the reason given on the Notice the landlord did not move into the unit and the landlord's primary intent was to sell the unit. I am therefore satisfied that the landlord did not use the property for its intended purpose as stated on the Two Month Notice and consequently the tenants have established a claim to recover compensation equivalent to two months' rent. The tenants will receive a Monetary Order to the amount of **\$3,400.00** pursuant to s. 67 of the *Act*.

With regard to the remainder of the tenants' claim for a further \$5,000.00; the tenants claim they suffered undue stress and mental anguish in having to move from the rental unit. It is my decision that the compensation awarded in the form of two months' rent is sufficient compensation for the stress and suffering caused due to the landlord's non-compliance with the *Act*. This section of the tenants' claim is therefore dismissed.

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

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,450.00**. 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 18, 2016

Residential Tenancy Branch