



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O, 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; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenants and two agents for the landlord attended the conference call hearing. The landlords had representation from Legal Counsel. The parties were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2011 for a fixed term tenancy. The tenancy agreement was renewed for a further fixed term on May 01, 2012 and thereafter continued as a month to month tenancy. Rent for this unit started at \$1,750.00 but was later reduced to \$1,640.00. The tenants paid a security deposit of \$875.00 which has been dealt with at the end of the tenancy.

The tenants testified that they had been served with a Two Month Notice to End Tenancy on March 30, 2016. This Notice had an effective date of July 01, 2016 and provided the reason to end the tenancy being 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 tenants testified that they vacated the rental unit on June 30, 2016.

The tenants testified that they had started to look for a new property to rent but were unable to find one in their price range; however, in the middle of June the landlord's property manager asked the tenants to take photos of the property which the tenants found unusual if the landlord was going to move into the unit.

The tenants testified that as they could not find alternative accommodation for their family to rent they had to borrow an RV and live on a campsite for 58 days. During this time the tenants found that the unit had been listed on Craigslist for rent for a higher rent of \$1,980.00. The tenant had to return to the unit to replace some garage door panels as agreed with the property manager. At that time the new tenants had moved into the unit and the tenant spoke to them about them renting the unit. The tenants' referred to the advert for the unit in their documentary evidence. The advert was placed on July 09, 2016.

The tenants testified that as the landlord did not use the rental unit for his own use and re-rented it for extra rent each month then the tenants feel that they have been

wrongfully evicted. This caused the tenants and their children to suffer as a result of being made homeless and uprooting the family unnecessarily. If the landlord had problems with his wife's immigration which delayed his return to Canada then he could have called the tenants and asked them to stay and the tenants would have willingly paid more rent rather than be uprooted. The tenants testified that as the landlord did not move into the rental unit they seek compensation equal to two months' rent to an amount of \$3,280.00.

The tenants testified that they incurred many additional costs in having to move from the rental unit. They had to cancel a family vacation as the money used went towards the tenants' savings for a deposit for a house purchase; they had to pay to use a laundromat and had to pay for hot showers for five people; they had to pay for a Canada Post box for their mail and a redirection service to that post box; they had to pay for storage for their belongings; for a title search to confirm the owners name for service of hearing documents; they had to pay for a storage container for 58 days; they had to pay rent for the campground for 58 days from June 26 to September 01, 2016; they had to buy propane to cook and heat the RV; and they lost wages in taking time off work to move their belongings and clean the rental unit. These costs are detailed as follows:

Title search	\$28.35
Strobox	\$179.20
National storage box	\$459.95
Canada Post mail box rental	\$99.75
Mail forwarding to the mail box	\$55.60
Campground rent	\$2,311.60
Showers for 58 days for five people at 1.00 a shower	\$290.00
Propane	\$34.18
Laundromat \$3.50 a wash \$2.50 a dry x 2 loads a week	\$120.00

Cancellation of family holiday	\$204.80
Lost wages for both tenants for moving and cleaning	\$1,236.40
Total amount claimed for the above items	\$4,815.03

The landlords agent (SL) testified that the landlord was due to return to Canada in July 2016 as he had got married in China; however, immigration held up his wife's entry into Canada and said it could take eight more months for this to go through. The landlord's mother takes care of the house and ensures the bills are all paid while the landlord is away. As his mother could not afford to do this with the unit empty the unit had to be re-rented. The landlord's management company took care of this on July 08, 2016. They found a tenant who wanted to rent long term so they had to do a one year lease and then if the landlord returns to Canada before that lease ends he will have to stay with his mother.

SL testified that at the time the landlord gave the tenants notice in April his intention was to move into the unit with his wife and not to re-rent it again. He only got married in July 2015 and has had to sponsor his wife to come to Canada but immigration held things up. At the time the unit was re-rented they did not know the tenants did not have a place to live or that they would have been interested in moving back into the unit. Therefore it would not be fair for the landlord to have to compensate the tenants.

The landlord's agent (CB) testified that she works for the property management company and when she served the Two Month Notice to the tenants she did so in good faith that the landlord was moving back into the unit. The landlord had told CB that he wanted to repossess the house but he does not necessarily know the law and he had to be told that the tenants were entitled to one free month's rent. When the tenants moved out the house was left impeccable clean and there were only some dents in the garage door which the tenants later repaired.

The tenants asked SL to explain that if the landlord knew that immigration was going to take some time why did he not call the tenants and ask them to stay. SL responded because this was before he had spoken to immigration. The tenants asked SL why the landlord needed photos of the unit. SL responded that he wanted to see if the unit needed painting or if there was any damage. CB responded that she thought he wanted the photos to re-rent the unit as he could have asked CB's company to do an inspection of the unit if he had any concerns about painting or damages.

Counsel for the landlord asked the tenants if they have any evidence showing they tried to rent properties. The tenants responded that property in the area was outside their financial constraints; however, they did look and also asked CB about rentals. The tenants testified that they even called the advert for this rental property when they saw it advertised. The tenants testified that they had to purchase a house and started looking for one at the beginning of August; their family helped them financially but they also continued to look for rentals.

Counsel for the landlord submitted that even with the tenants' laundry costs, their costs to shower, for propane costs and rent for the campsite the tenants costs were still cheaper than the rent they paid for the unit so they should have been able to save money each month. If the tenants choose to cancel their vacation then this is not the landlord's responsibility if they were saving money to go towards buying their own home. The landlord acted in good faith when he served the Two Month Notice and it was out of his control when immigration prevented him and his wife moving back to Canada.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' claim for compensation equal to two months' rent because the unit was not used for its intended purpose. I refer the parties to s. 51(2)(a) and (b) of the *Act* which states:

51 (2) (a) *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*

(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.

I am not persuaded that the landlord would not have known until the last minute that immigration was holding up his wife's entry into Canada. The landlord could have taken steps to determine when immigration was going to allow his wife entry before he served the tenants with the Two Month Notice. I have further doubts about the landlord's true intention due to his request for photographs of the unit and the fact that it was advertised and re-rented so quickly after the tenant's vacated and for a much higher rent. Consequently, I find the tenants are entitled to compensation equal to two months' rent of **\$3,280.00**.

With regard to the reminder of the tenants' claims for costs associated with moving. There is no provision under the *Act* for other costs to be awarded to tenants if they experience additional expenses after vacating a rental unit. The tenants did have the choice to dispute the Two Month Notice within 15 days of receiving it and their choice not to do so. Just because the tenants could not find affordable rental units in the area does not mean the landlord is responsible to pay for any additional costs they may have incurred. The tenants would still have had to pay rent, pay utilities, possibly redirect their

mail, do laundry and take showers wherever they were living. If the tenants had to store their belongings this is also not the landlord's responsibility. The tenants would also have had to move and clean the house even if they had found alternative accommodation. I further find if the tenants choose to cancel their family vacation to save money then this again was their choice and not the responsibility of the landlord. If the tenants decided to do a title search when they could have served the landlord's agent then they must bear this cost. Consequently, the tenants' claim to recover the amount of \$4,815.03 is dismissed.

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 **\$3,280.00** pursuant to s. 67 of the *Act*. 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: September 16, 2016

Residential Tenancy Branch