



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 21, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 15, 2015 (the "2 Month Notice"); a monetary order for money owed or compensation for damage or loss; and an order granting recovery of the filing fee.

The Tenant and the Landlord each attended the hearing on their own behalf. Both provided their solemn affirmation at the outset of the hearing, and acknowledged receipt of the other's evidence package.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Preliminary and Procedural Matters

The Tenant confirmed he vacated the rental unit by November 1, 2015, and that an order cancelling the 2 Month Notice is not required. Accordingly, I will not consider this aspect of the Tenant's claim further in this Decision.

Issue to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on March 1, 2014 and ended on November 1, 2015. At all material times, the Tenant paid rent in the amount of \$1,000.00 per month.

The Tenant seeks compensation pursuant to section 51 of the *Act*, alleging the Landlord did not use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the 2 Month Notice.

A copy of the 2 Month Notice was submitted with the Tenant's documentary evidence. It confirms an effective date of November 1, 2015, which is when the Tenant vacated the rental unit.

The Tenant testified that he became aware at the end of March 2016 that the rental property had been sold. After conducting some research, he learned that the property had indeed been sold on February 18, 2016, some 3-1/2 months after the effective date of the 2 Month Notice. The Tenant provided with his documentary evidence a copy of the Form A Freehold Transfer purporting to transfer ownership of the property.

The Tenant alleges bad faith on the part of the Landlord. He testified to his belief it was always the Landlord's intention to sell the property, a claim the Landlord strongly denied.

The Landlord agrees generally with the timeline set out by the Tenant, including the sale of the rental property on February 18, 2016. However, she testified that selling the property was not being considered until she was approached by a developer in late November 2015, and subsequently received an offer to purchase the property from some friends in January 2016. According to the Landlord, the sale happened very quickly.

With respect to the provisions relied upon by the Tenant, the Landlord submitted that sections 49 and 51 of the *Act* are intended to deter bad faith behaviour, and that she has always acted with the Tenant in good faith.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

The Tenant relies on section 51 of the *Act*, which states:

- (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

...

- (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.

This provision provides for mandatory compensation in the event a rental property is not used by a landlord in accordance with the purpose stated on a notice to end tenancy. Sections 51(2)(a) and 51(2)(b) are mutually exclusive. That is, if a landlord fails to comply with either subsection, compensation is payable to a tenant. Good faith is not a consideration under section 51 of the *Act*.

The Landlord acknowledged, and I find, that the rental property was sold on February 18, 2016, roughly 3-1/2 months after the tenancy ended. As a result, I find that the rental property was not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the 2 Month Notice.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$2,100.00, which consists of compensation under section 51(2)(b) of the *Act* (\$2,000.00) and the filing fee (\$100.00).

Conclusion

The Tenant is granted a monetary order in the amount of \$2,100.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 19, 2016

Residential Tenancy Branch