



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, CNL, OLC, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, to cancel a Notice ending tenancy for landlords' use of the property, an order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord on September 9, 2016. A copy of the Canada Post registered mail receipt and tracking number was supplied as evidence. The tenant used the service address provided by the landlord on a Notice ending tenancy issued by the landlord on June 23, 2016. The mail was returned marked by Canada Post as "unclaimed."

A refusal to claim registered mail does not allow a party to avoid service. Therefore, I find pursuant to section 89 and 90 of the Act; that the landlord is deemed served on the fifth date after mailing; September 14, 2016.

The landlord did not appear at the hearing.

Preliminary Matters

The tenant amended the application on September 14, 2016 to increase the claim. The amendment was not served to the landlord. Therefore, the amendment was not considered as the other party has not been notified of the increased claim.

The tenant has not disputed a Notice ending tenancy. The tenant has vacated the rental unit. As the tenancy has ended there is no need to order the landlord to comply with the Act.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to double the rent payable, in accordance with section 51(2) of the Act?

Background and Evidence

The tenancy commenced on April 1, 2011. Rent was \$825.00 per month.

In May 2016 the home was sold; the tenancy continued with the new owner as landlord.

On June 23, 2016 the landlord issued a two month Notice to end tenancy for landlords' use of the property. The reason given for the Notice was that the landlord or a close family member would occupy the rental unit. The Notice had an effective date of August 31, 2016. The tenant said the notice followed the landlord having made comments that the rent should be doubled.

The tenant did not dispute the Notice and vacated on August 28, 2016.

On August 31, 2016 the tenant was using a popular web site to search for housing and found her unit listed for rent. A copy of the advertisement was supplied as evidence. The map showed the unit in the same location as the rental; the purple wall in the bedroom and the chocolate wall in the living room that had been painted by tenant could be seen; plus the green kitchen cabinets could be seen in the photos provided in the advertisement. The advertisement indicated the unit was now three bedrooms; the tenant believes some walls must have been opened, as her unit was a bachelor.

The tenant had wondered why the landlord had a property manager accompany her when the move-out inspection took place, but it did not occur to the tenant that the landlords' son was not moving into the unit, as she had been told.

The tenant is claiming double the monthly rent as compensation.

Analysis

I have considered the evidence before me and find that the landlord did not use the rental unit in the manner intended. Within hours of vacating the tenant located an advertisement that I find, from the evidence before me, was for rental of the unit the landlord said her son would occupy. The photos in the advertisement were of the same rooms the tenant had occupied, in the same location as the rental unit. The advertisement for the unit does not support the reason given on the Notice ending tenancy. From the evidence before me the only reasonable conclusion is that the landlord's son was not going to occupy the rental unit and that the landlord planned on renting the unit to a new tenant.

Section 51(2) of the Act provides:

(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.

Therefore, as the landlord did not use the rental unit for the stated purpose I find pursuant to section 51(2)(b) of the Act that the tenant is entitled to compensation in the

sum equivalent to double the monthly rent; \$1,650.00. If the landlords' son was going to occupy the rental unit there would have been no reason to list the unit for rent.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$1,750.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to compensation pursuant to section 51(2) of the Act in the sum of \$1,650.00.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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: October 31, 2016

Residential Tenancy Branch

