



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated November 1, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for landlord's use of property;
- monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants were represented at the hearing by the Tenant M.M. The Landlords were both in attendance. All parties giving evidence provided a solemn affirmation.

The Tenant M.M. testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlords by registered mail on November 4, 2016. A subsequent evidence package was also served on the Landlord by registered mail on November 30, 2016. Registered mail receipts were submitted with the Tenants' documentary evidence, and the Landlord K.H. acknowledged receipt.

The Landlord K.H. testified the Tenants were served with the documentary evidence upon which the Landlords intended to rely by registered mail on December 1, 2016. The Tenant acknowledged receipt. Neither party raised any issues with respect to service or receipt of these documents. All parties were represented and prepared to proceed with the hearing.

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 M.M. confirmed that, pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 29, 2016 (the "2 Month Notice"), the Tenants moved out of the rental unit on September 26, 2016. Accordingly, it is not necessary for me to consider the Tenants' request for an order cancelling the 2 Month Notice. This aspect of the Tenants' claim has not been considered further in this Decision.

Issue to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation or a tenancy agreement?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenant M.M. confirmed that, in response to the 2 Month Notice issued by the Landlords, the Tenants moved out of the rental unit on October 26, 2016. A copy of the 2 Month Notice, submitted with the Tenant's documentary evidence, confirms the reason for ending the tenancy was as follows:

All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

[Reproduced as written.]

At the end of the tenancy, rent was \$725.00 per month.

The Tenant M.M. stated that neither the Landlords nor a close family member has occupied the rental unit. Rather, the Tenant M.M. testified that the Landlords listed the

rental unit for rent soon after the Tenants moved out. In support, the Tenants provided a copy of a listing for a “3 bed top floor of a house”. The Tenant M.M. testified he first observed the listing on Craigslist on or about October 9, 2016; the monthly rent being sought was \$1,600.00. The Tenant M.M. testified to his belief this was a deceitful attempt to get more rent from the rental unit. The Tenant M.M. submitted the Tenants are entitled to recover \$3,200.00, which is double the amount of rent sought in the Landlord’s rental listing.

The Landlords did not deny they have re-rented the rental unit. However, they maintain they intend to move in once the Landlord D.H. has obtained permanent employment in the area. The Tenant D.H. testified he is almost certain his employment will be permanent in early 2017, and that they intend to move into the rental unit at that time.

Analysis

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

The Tenants rely on section 51 of the *Act*. It 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 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 for landlord's use of property.

I find the Tenant has demonstrated an entitlement to compensation pursuant to section 51(2)(b) of the *Act*. The Landlords acknowledged the rental property was listed for rent, contrary to the stated purpose on the 2 Month Notice. I find that the Landlords did not use the rental property for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. Accordingly, the Tenants are entitled to a monetary award of \$1,450.00, which is double the amount of rent paid by the Tenants during the tenancy.

Having been successful, I also find the Tenants are entitled to recover the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,550.00, which consists of compensation pursuant to section 51 of the *Act* (\$1,450.00) and the filing fee (\$100.00).

Conclusion

The Tenant is granted a monetary order in the amount of \$1,550.00. 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: December 16, 2016

Residential Tenancy Branch