



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$2600
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 26, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2014. The rent was \$1300 per month payable on first day of each month. The tenant(s) paid a security deposit of \$650 at the start of the tenancy.

The landlord served a 2 month Notice to End Tenancy on the Tenants on June 30, 2016. The tenants gave the landlord notice and the tenancy ended on August 8, 2016.

The tenant(s) provided the landlord with his/her their forwarding address in writing on June 30, 2011.

The Notice to End Tenancy provides as follows:

- The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use

The tenants testified they are making a claim for the equivalent of 2 months rent under section 51(2) of the Act which provides as follow:

“51(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. “

The tenants submit the landlord did not have grounds to end the tenancy under section 49 as they did not have all necessary permits and approvals required by law to convert the rental unit to non-residential use. They also submit the landlord was not acting in good faith. Policy Guideline #2 includes the following:

“If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.”

The tenant provided evidence from the Municipality of Saanich no application for re-zoning has been made.

The landlord gave the following testimony:

- The rental property was owned by she and her husband in joint tenancy. She received title to the rental property at the end of July 2016 as part of the divorce settlement.
- She has decided to use the rental property for a “youth residence” and youth home for “at risk youths.” She incorporated a company on July 19, 2016. The company has a contract with the Ministry of Child Services. It offers a day program and a over-night program for 2 youth. She has an office in the property. The company operates the business on 4 other properties.
- No permits or approvals are necessary to operate the business. The Ministry requires the business to be licensed if there are 4 or more youths living in the home. As only 2 are living in the home this is not necessary in this case.

Analysis:

After carefully considering all of the evidence I determine the tenants failed to prove their claim for the following reasons:

- The tenants testified they were bringing the claim under section 51(2). That section provides that tenants are entitled to the equivalent of 2 months rent 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 if 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. I determined the use of the property to operate day programs and a group home for 2 youths who are at risk is a non-residential purposes as it not a residential tenancy matter. Further, the landlord began to operate this business shortly after the tenants vacated. The landlord has complied with the provisions of section 51(2).
- I do not accept the submission of the Tenants that the landlord was not acting in good faith. There is not evidence of an ulterior motive. The landlord stated to operate within a reasonable period of time.
- The tenants failed to prove the landlord did not have grounds to end the tenancy based on the grounds set out in the Notice. There is insufficient evidence to establish that the landlord failed to obtain all of the necessary permits or approvals.
- I do not accept the submission of the tenants that they are entitled to 2 months rent even if their submission that the landlord failed to comply with section 49 is correct. Their claim under section 51(2) is not supported by the evidence. The tenants received the benefit of the equivalent of one month rent under section 51(1). The tenants had an opportunity to dispute the 2

month Notice to End Tenancy but chose not to. The tenants failed to produce evidence that they suffered damages as a result.

Conclusion:

In summary I ordered that the application of the tenant be dismissed without leave to re-apply.

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.

~~In conclusion I ordered the landlord to pay to the tenant the sum of \$ plus \$50 for the cost of the filing fee for a total of \$. (This paragraph was included in error and should be deleted)~~

Dated: December 23, 2016

This decision is corrected pursuant to section 78(1) of the Residential Tenancy Act this 27th day of February 2017

Residential Tenancy Branch