



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

On September 18, 2016, the Tenants submitted an Application for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Applicants / Tenants appeared at the hearing; however the Landlords did not.

The Tenants provided affirmed testimony that the Notice of Hearing was sent to each of the Landlords on September 22, 2016, using registered mail. The Tenants testified that the Landlord failed to pick up the registered mail and the registered mail was returned to the Tenants. The Tenants provided a copy of the registered mail receipts to support their testimony.

I find that the Landlords were properly served with notice of the hearing. The Notice of Hearing was served to each Landlord in accordance with section 89 of the Act and the Notices are deemed to have been received by the Landlords on the fifth day after they were mailed, pursuant to section 90 of the Act.

The hearing proceeded and the Tenant was provided the opportunity to present her evidence, orally and in written and documentary form, and 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 Tenants requested to amend the address of the Landlord within the Application for Dispute Resolution. The Tenants testified that they sent the Notice of Hearing using Registered Mail to the Landlord's correct address for service, and not to the incorrect address listed in the Application. The Tenants' application is amended.

At the end of the hearing, the Tenants provided a copy of the 2 Month Notice, two Registered Mail receipts, and a tenancy agreement. The registered mail receipts and tenancy agreement indicate the mail was addressed and sent to the Landlords' at the address the Landlords provided as their home address.

I find that the Notice of Hearing documents were sent to the Landlords' proper service address.

Issues to be Decided

- Are the Tenants entitled to compensation from the Landlord?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that the tenancy began on May 15, 2014. The Tenants testified that the property was sold and a new tenancy agreement was entered into with the new owner on March 16, 2016. The Tenants paid rent in the amount of \$1,550.00 and that the Tenants paid the Landlord a \$750.00 security deposit.

The Tenants testified that the Landlord issued them a 2 Month Notice to End Tenancy For Landlord Use of Property.

The Tenants testified that they received the 2 Month Notice to End Tenancy for Landlord Use of Property on June 27, 2016. The Tenants accepted the 2 Month Notice and moved out of the rental unit on August 31, 2016.

The reason, stated within the 2 Month Notice, for ending the tenancy is that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Tenant provided a copy of the 2 Month Notice.

The Tenants provided a copy of the 2 Month Notice To End Tenancy for Landlord use of Property. The Notice contains some omissions. The Landlord failed to write their names on the Notice and provided an incomplete date of signature.

The Tenants testified that they became aware that the Landlord did not use the rental unit for a family member approximately 10 days after they moved out.

The Tenant testified that the rental unit was not used for the purpose stated within the 2 Month Notice, and they submit that the Landlords must pay them the amount of two months' rent under the tenancy agreement.

The Tenants provided a letter dated January 17, 2017, from a home owner located next to the rental unit. The home owner's letter indicates that 10 days after the Tenants moved out, a new

Tenant moved in. The home owner indicates that she confirmed that the new tenant is not a family member of the Landlord but is a friend who moved from Calgary.

The Tenants are seeking compensation from the Landlord in the amount of \$3,100.00.

Analysis

The validity of the 2 Month Notice To End Tenancy that the Tenants received from the Landlords on June 27, 2016, is not the issue that I need to determine. The Tenants relied on the 2 Month Notice and moved out of the rental unit. The issue before me is whether or not the Landlord used the rental unit for the purpose stated within the 2 Month Notice.

Section 51 (1) of the Act states that 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.

Section 51 (2) of the Act states that 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.*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlords did not pick up their mail and are deemed served with the Notice of Hearing according to section 90 of the Act. The Tenants testimony and evidence was unopposed.

The Landlord issued a 2 Month Notice To End Tenancy for Landlord Use of Property that the Tenants received on June 27, 2016.

While I acknowledge that the Tenants have provided third party evidence to support their claim, the Tenants' testimony and evidence is unopposed. The Landlords cannot avoid service by refusing to pick up their registered mail. I find that the Landlord failed to use the rental unit for the purpose stated within the 2 Month Notice for at least 6 months after the effective date of the notice.

Pursuant to section 51(2) of the Act, I find that the Landlords owe the Tenants compensation in the amount of two months' rent. I award the Tenants compensation in the amount of \$3,100.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I find that the Tenants have established a monetary claim in the amount of \$3,200.00 comprised of \$3,100.00 owing for compensation due to the 2 Month Notice and the \$100.00 fee paid by the Tenants for this hearing.

I grant the Tenants a monetary order in the amount of \$3,200.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlord issued a 2 Month Notice To End Tenancy for Landlord Use of Property and failed to use the rental unit for the purpose state within the 2 Month Notice and therefore the Landlords must compensate the Tenants.

The Tenants are granted a monetary order in the amount of \$3,200.00.

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: March 21, 2017

Residential Tenancy Branch