



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants and their witness.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 5, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the landlord not using the property for the stated purpose after a 2 Month Notice to End Tenancy for Landlord's Use of Property was issued and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted the tenancy began in June 2014 as a 1 year fixed term tenancy that converted to a month to month tenancy in June 2015 for a monthly rent of \$2,400.00 due on the 1st of each month with a security deposit of \$1,200.00 paid.

The tenants submitted that the tenancy ended after the landlord sold the rental unit to his partner and the purchaser provided a request, in writing, for the landlord to issue a Notice to End Tenancy because the purchaser or a close family member would be occupying the rental unit. A copy of the 2 Month Notice to End Tenancy for Landlord's

Use of Property issued on April 28, 2016 with an effective vacancy date of June 30, 2016 was submitted into evidence.

The tenant testified that even after the Notice was issued the landlord agreed to allow them to remain in the rental unit at twice the amount of rent. The tenant submitted that they did not realize, at the time, that the landlord could not impose such a rent increase, so they vacated the rental unit in accordance with the 2 Month Notice.

The tenant submitted the landlord is renting the rental unit out as short term vacation rental. The tenant's witness testified that on August 17, 2016 she went to the rental unit to visit the tenants and no one was there. She stated she repeated her attempts until August 20, 2016 when a man answered the door and told her that he was only in the unit for 2 weeks and he knew the landlord had other properties perhaps the tenants were living elsewhere.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;
 - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

Section 51 of the *Act* states that a tenant who receives a notice to end 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) states that in addition, if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after

the effective date or 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 must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

Based on the tenants' undisputed submissions, I find the landlord has failed to use the rental unit in accordance with the reasons given on the 2 Month Notice to End Tenancy issued on April 28, 2016. As such, pursuant to Section 51(2), I find tenants are entitled to compensation in an amount equivalent to two month's rent under the tenancy agreement.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,900.00** comprised of \$4,800.00 compensation owed and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 04, 2017

Residential Tenancy Branch