



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order pursuant to 51(2) of the *Residential Tenancy Act* (the Act), and to recover the filing fee.

Both of the applicants and one of the respondent landlords attended the hearing. The parties provided testimony and were provided the opportunity to make relevant submissions. The parties were also provided opportunity to mutually resolve their dispute to no avail. The tenant provided evidence they served the landlords with their application and their evidence and acknowledged receiving the evidence of the landlord. The landlord acknowledged receiving all of the evidence of the tenant. The hearing advanced on the merits of the tenant's application. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started in October 2011 and ended February 28, 2016. The rental unit of the tenancy is a house with 6 bedrooms and 4 bathrooms. The rent payable under the tenancy agreement was \$2000.00 per month. The undisputed evidence in this matter is that the tenancy ended in accordance with the provisions of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated January 01, 2016 with a stated effective date of February 29, 2016 for the reason the rental unit would, *in good faith* be occupied by the landlord pursuant to Section 49(3) of the Act, stated in the Notice to End as: *the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of the individuals' spouse.*

The parties agreed the tenant first received the Notice to End December 31, 2015 by e-mail and subsequently by registered mail. Regardless of which the tenant testified they accepted the Notice and acted toward vacating on the stated effective date of the Notice and succeeded in doing so. The tenant testified they were provided the requisite compensation by the landlord equivalent of one month's rent under Section 51(1).

The undisputed relevant evidence is as follows.

The tenant provided evidence the rental unit was advertised for rent on Craigslist 6 weeks after they vacated. Both parties provided evidence that on April 17, 2016 the rental unit was advertised for rent for \$2500.00 per month, and eventually was advertised for sale several months later. The document evidence of both parties states the Craigslist advertisement of the rental unit was for 5 bedrooms and 2.5 bathrooms.

The landlord testified that as of March 01, 2016 they occupied 1 of the 6 bedrooms in the house and in July 2016 successfully re-rented the remaining balance of the house while continuing to occupy their smaller portion. The house was then subsequently listed for sale two months later.

The landlord relied on their argument they sufficiently occupied the rental unit so as to comply with the purpose stated in their Notice to End. The tenant argued the landlord unnecessarily forced their family to seek alternate more costly accommodations without intention to occupy the rental unit of the tenancy.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

In respect to the tenant's claim, Section 51(2) of the Act states;

Tenant's compensation: section 49 notice

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

I find the relevant evidence in this matter is that the landlord occupied a fraction of the rental unit after the tenant vacated the rental house. The evidence is that after 6 weeks the landlord advertised to re-rent the greater portion of the house which they claim they successfully did 4.5 months after the effective date of the Notice to End.

I find *the tenancy* in this matter was comprised of the tenant's right to possession of a rental unit, agreed by the parties in 2011 to be a house of 6 bedrooms and 4 bathrooms. I find the landlord elected to end the tenant's right to possession of the entire house for their personal use as permitted in accordance with Section 49 of the Act. I accept the landlord's testimony they solely occupied a fraction of the 6 bedroom rental unit and re-rented the balance of 5 bedrooms.

I find the relevant portion of the Act operates in allowing a landlord to end a tenant's right to possession of the rental unit (the tenancy) of the agreement if they have a *good faith intention* to personally occupy the rental unit. I find the Act does not operate for the landlord to end a tenancy (the tenant's right to possession of the rental unit) so as to solely occupy a fraction of the rental unit under the tenancy agreement. In this matter, I find the landlord did not accomplish the stated purpose for ending the tenant's right to possession. I find the Act authorized the landlord to end possession of the house for the purpose of personally occupying the entire house, and did not. I do not accept the landlord's argument that ending the tenant's right to possession of the entire house in order to occupy a fraction adequately meets the *good faith* requirement to occupy the rental unit as prescribed by Section 49 of the Act.

I find the rental unit was not used for the stated purpose for ending the tenancy within a reasonable period after the effective date of the landlord's Notice to End; and, nor was it used in accordance with Section 51(2)(b).

As a result, I find the tenant has established an entitlement under **Section 51(2)** of

the Act in the prescribed amount equivalent of double the monthly rent payable under the tenancy agreement of \$2000.00. Therefore, I grant the tenant the

amount of \$4000.00. The tenant is further entitled to recovery of the \$100.00 filing fee for this application for a total award of **\$4100.00**. Therefore,

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$4100.00** payable by the landlord. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted.

This Decision is final and binding.

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: May 09, 2017

Residential Tenancy Branch