



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

This hearing dealt with the Tenant's Application for Dispute Resolution seeking monetary compensation for damage or loss under the Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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.

Issue(s) to be Decided

Was there a breach of section 51 of the Act by the Purchasing Landlord (the "Landlord")?

Background and Evidence

In early May of 2016, the Tenant was served with a two month Notice to End Tenancy with an effective end date indicated as June 30, 2016 (the "Notice"). The notice was given by the previous owner of the subject property as was directed by the purchaser of the property, herein referred to as the Landlord.

The Tenant testified that the Notice stated the reason for ending the tenancy was set out as:

"All of the conditions for 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."

The Tenant had difficulty finding another place to live at the time, and the Landlord allowed the Tenant to stay until July 15, 2016. The Tenant testified that she had received one month of rent in compensation for June 2016, and that the Landlord kept the security deposit of \$1,250.00 for the rent that was due for half of July 2016.

The Tenant testified that the original lease, which was in writing although no copy was submitted in evidence, set out the monthly rent as \$2,500.00 per month, payable on the first day of the month. The Tenant testified there had been an agreement with the original Landlord that the rent would be reduced due to flooding and other issues with the rental unit.

The Tenant was upset at having to move because she claimed she had to quit her job and it was very difficult to find another place to live. She claimed she had to move to a different area and had to quit her job.

After the Tenant moved out a friend contacted her about the subject rental unit. The friend had noticed the rental unit was listed for rent.

In evidence the Tenant supplied a copy of an advertisement on a popular website, listing the rental unit for rent at \$2,599.00 per month. The advertisement is dated August 14, 2016, and states that it was, "Posted 25 days ago".

The Tenant had claimed for compensation under the Act, and requested one month of rent in compensation, storage and moving costs, and for lost wages and loss of her career. The Tenant had claimed \$9,731.00 in total compensation.

The Landlord testified that after the Tenant vacated the rental unit she did not move in. The Landlord had intended to move into the rental unit and do some building on the lot and then sell the property. She had a survey prepared apparently for this building work and had intended on moving into the rental unit while the work was being done.

The Landlord testified that around that time the real estate market had changed due to a new tax program instigated by the provincial government. She testified that she changed her mind about building on the property and decided to rent out the property instead of moving in. She testified she was worried about the change in the market. She testified she was a mortgage broker and saw the real estate market was changing.

The Landlord tried to argue that the Tenant had not paid her rent for June, however, it was explained to the Landlord that the Tenant was entitled to one month of free rent due to the Notice given to her by the previous owner. The Landlord also claimed she had a 10 day Notice to End tenancy that she signed and was going to give to the Tenant.

The Tenant's evidence was that no 10 day NTE had ever been served on her and no rent was owed to the Landlord here, or to the previous owner. The Tenant explained the Landlord got to keep the security deposit in payment for the half month of rent in July.

The Landlord testified she had not looked at the statement of adjustments for the purchase and was not sure if she had been paid the security deposit of the Tenant. The Landlord also agreed she had not served the Tenant with a 10 day Notice to End tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 51 of the Act by failing to occupy the rental unit as she indicated she would in the Notice.

All residential tenancies in the Province of British Columbia are subject to the Act. The Act sets out all ways in which a tenancy may legally end.

Section 49 of the Act reads,

...

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit; ...

[Emphasis added.]

Under section 51(1) of the Act, once the Notice was given under section 49 and the Tenant acted upon it, the Tenant was entitled to compensation equivalent to one month of rent. The Tenant agreed she had received this free month of rent from the previous owner.

The above was explained to the Landlord during the hearing.

The Act also contains a provision in section 51(2), which requires additional compensation to be paid to the Tenant in certain circumstances:

...

(2) In addition to the amount payable under subsection 51(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.

[Emphasis added.]

As described above, in this instance the stated purpose for ending the tenancy in the Notice was that the Landlord (here the purchaser) intended in good faith to occupy the rental unit.

In this case, the rental unit has not been used by the Landlord for this purpose for any period of time during the six months since the tenancy ended. The Landlord simply listed it for rent and never moved in.

As explained to the parties during the hearing, the fact that the Landlord intended to move into the rental unit was not relevant to the issue of whether or not she actually moved into the rental unit. Good faith intentions are only relevant at the time the Notice is given under section 49 of the Act.

Once the tenancy ends, then section 51 of the Act applies. In this matter the Landlord had not actually occupied the rental unit as set out in the Notice. While she may have intended to move in she did not in fact move in. Therefore, I find the Landlord breached section 51(2) of the Act.

The purpose of these portions of the Act includes, but is not limited to, protection for tenancies from unnecessarily having to end and to compensate renters for the cost of doing so when the tenancy is ending solely for the benefit of the property owner. The doubling provisions in these specific portions of the Act are intended to further compensate a renter for the losses of having to move when the tenancy has ended for purposes other than those set out in the Act or the Notice.

As explained to the Landlord at the end of the hearing, the preferred action here would have been for the tenancy to continue until she was ready to build or move into the rental unit. At that point she could have given the Tenant her own two month Notice to End Tenancy, with the appropriate reason for ending the tenancy indicated in the notice.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Having found the Landlord has not complied with the Act, I find the Tenant has established a monetary claim under section 51(2) in the amount of **\$5,100.00**, comprised of \$5,000.00 (double the monthly rent) and the \$100.00 filing fee for the Application. I grant and issue the Tenant a monetary order in those terms, which must be served on the Landlord and may be enforced in the Provincial Court (Small Claims Division).

I have dismissed the claims of the Tenant for moving costs, lost wages, time for the hearing and fuel etc., as these amounts are not compensable under the Act as I explained to the parties during the hearing.

Conclusion

The Tenant has established a claim for **\$5,100.00**, as the Landlord breached section 51 of the Act when she failed to occupy the rental unit as was indicated on a two month Notice to End Tenancy issued to the Tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 30, 2017

Residential Tenancy Branch