



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TAKARA INVESTMENTS & REMAX PROFESSIONAL RENTAL
MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, OLC

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the “Act”).

The Tenant is requesting to cancel a notice to end tenancy; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and for the Landlord to comply with the Act. The matter was scheduled as a teleconference hearing.

Both parties were present at the hearing. The Landlord was represented by Ms. D.M. The purchaser of the property was represented by Mr. J.V.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before 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 Application for Dispute Resolution contains the names of Tenants from the rental property that have separate tenancy agreements with the Landlord and lived in separate suites.

The Tenants cannot combine their claims to be heard together. Each Tenant must apply for dispute resolution and pay the application fee. Requests to join Applications are considered by the Residential Tenancy Branch at the time of the application. The Tenants did not file separate applications.

The Tenant, Mr. J.B.S. stated that he would like to proceed.

The Tenant named Mr. M.A. was not present at the hearing and will need to apply for dispute resolution if he wishes to proceed with a claim against the Landlord or purchaser of the property.

Issue to be Decided

- Is the Tenant entitled to compensation under the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant testified that the tenancy began in October 2005. The parties agreed that rent in the amount of \$1,530.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$700.00.

The Tenant testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 24, 2016, ("the 2 Month Notice"). The reason for ending the tenancy within the 2 Month Notice is:

All of the conditions for the 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 to in good faith to occupy the rental unit.

The Tenant accepted the 2 Month Notice and moved out of the rental unit on July 31, 2016. The Tenant testified that he received compensation in the amount of 1 months' rent.

The Tenant is seeking compensation for the following items:

<u>Moving Costs</u>	<u>\$6,122.20</u>
<u>Yard Maintenance</u>	<u>\$720.00</u>

<u>Illegal Eviction</u>	<u>\$4,800.00</u>
<u>Illegal rent increase</u>	<u>\$220.00</u>
<u>Loss of quiet peaceful enjoyment</u>	<u>\$625.00</u>
<u>Filing fee</u>	<u>\$100.00</u>

Compensation for Breach of Section 51 of the Act

The Tenant testified that the 2 Month Notice was issued in bad faith. He testified that the purchaser did not use the property for themselves or for family, but advertised the unit for rent on the internet at \$2,300.00 per month.

The Tenant provided a copy of advertisement from websites showing that the unit was for rent in September 2016.

The Landlord provided a document dated May 19, 2016, indicating that the purchaser wants to occupy the premises and requested the Landlord to issue the 2 Month Notice to the Tenant.

The purchaser's agent submitted that the purchaser initially intended to occupy the rental unit but changed her mind. The purchasers agent agreed to pay the Tenant the amount of two months' rent, for failing to use the property for the reason stated in the 2 Month Notice.

Moving Costs

The Tenant testified that he accepted the 2 Month Notice and moved out of the rental property. The Tenant testified that he spent a lot of money on moving costs. The Tenant discovered that the purchaser had advertised the rental unit for rent. The Tenant submitted that the purchaser did not have the intent to occupy the rental unit and therefore the Tenant is requesting compensation of \$6,122.20 for moving costs.

Illegal rent increase

The Tenant testified that the Landlord increased his rent without issuing a proper Notice of Rent Increase. The Tenant testified that his monthly rent increased from \$1,510.00 to \$1,530.00 on September 1, 2015. The Tenant testified that the Landlord takes the rent from the Tenants account automatically and the Tenant did not notice the extra amount until months later. The Tenant is seeking to recover \$220.00 for the illegal rent increase. The Tenant provided banking records showing the rent withdrawal amount.

In response, the Landlord's agent testified that the Tenant should have brought the issue up at the time the extra rent was taken.

Loss of quiet enjoyment

The Tenant is seeking compensation in the amount of \$625.00 for being disturbed by the Landlord when the property was for sale. He testified that he had to wait for real estate agents who sometimes failed to show up. He submitted that there were occasions that the realtor would not show up. He testified that during an open house, 20 people were going through his unit which caused him concern for the safety and security of his property. The Tenant testified that nothing was taken. He testified that the Landlord gave notice to enter after the property had sold. The Tenant wants compensation from the Landlord for loss of quiet enjoyment and his time.

The Tenant testified that he received written notices for entry from the Landlord and was provided 24 hours' notice prior to entry.

In response, the Landlord testified that she is aware that the Tenant was given three written notices of entry. The Landlord testified that she is not aware of any lateness. The Landlord testified that a realtor called her because the door was locked and the realtor could not gain access to the rental unit. The Landlord provided copies of the notices of entry.

Yard Maintenance

The Tenant testified that for the past two years of the tenancy he had to maintain the yard. He testified that there was no requirement in the tenancy agreement that he was responsible to perform yard maintenance. He submitted that he performed the yard maintenance to avoid issues with the Landlord. He submitted that he was expected to do the work.

In response, the Landlord testified that there is nothing on record that the Tenant was asked or required to perform yard maintenance.

Analysis

Section 51 (2) of the Act states:

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

Illegal Rent Increase

The Tenant provided bank records to support his submission that the Landlord increased the rent by \$20.00 per month starting in September 2015. The Tenancy agreement indicates the rent at the start of the tenancy was \$1,400.00. The Landlord D.M. acknowledged that the rent at the end of the tenancy was \$1,530.00.

The Landlord testified that she could not locate a record of a notice of rent increase effective September 2015.

I find that the Tenant received an illegal rent increase and is entitled to recover the over payment. I grant the Tenant the amount of \$200.00 for the 10 months of rent paid from September 2015, up to and including June 2016. The Tenant did not pay rent for July 2017, due to the 2 Month Notice.

Compensation for breach of section 51

I find that the purchaser failed to use the rental property for the reason stated within the 2 Month Notice. The purchaser re-rented the unit to a new tenant. Pursuant to section 51(2) of the Act, the purchaser must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the purchaser owes the Tenant the equivalent of two months' rent payable under the tenancy agreement. I award the Tenant the amount of \$3,020.00.

Moving Costs

The Tenant accepted the 2 Month Notice and moved out of the rental unit on July 31, 2016.

The Act does not specifically permit additional compensation or moving costs to be awarded when a Landlord issues a 2 Month Notice and the purchaser does not use the rental unit for the stated purpose. The Act specifically allows compensation of double the monthly rent payable under the tenancy agreement if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

I have already awarded the Tenant compensation for the purchaser's breach of section 49 of the Act. The Tenant's request for compensation for moving costs is dismissed.

Yard Maintenance

I find that there is no term in the tenancy agreement that required the Tenant to perform the yard maintenance. The Tenant testified that he performed the work to avoid an issue. The Tenant should have raised the issue with the Landlord during the tenancy, or could have applied for dispute resolution.

The Tenants claim for compensation for performing yard maintenance is dismissed.

Loss of Quiet Peaceful Enjoyment

The Residential Tenancy Branch Policy Guideline #7 Locks and Access intended to help the parties to an application understand issues that are likely to be relevant.

The Guideline provides:

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- *inspecting the premises for damage,*
- *carrying out repairs to the premises,*
- *showing the premises to prospective tenants, or*
- *showing the premises to prospective purchasers.*

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

I find that there is insufficient evidence from the Tenant to prove that the number of showings of the property was unreasonable. If the Tenant believed the number of showings was unreasonable, the Tenant could have applied for arbitration, rather than denying access.

I find that it is not required that the Tenant be present at the time of entry. The Tenant had the right to remain in the unit during the showings; however it was the Tenants choice whether or not to be present. I find that the Notices of Entry contained reasons that were reasonable and the Notices complied with the requirements of section 29 of the Act.

The Tenants requests for compensation for his time and for a loss of quiet enjoyment are dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord and Purchaser to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. Each party will pay \$50.00.

I find that the Landlord owes the Tenant \$250.00 comprised of the \$200.00 for the illegal rent increase and \$50.00 for the cost of the Tenant's application.

I find that the purchaser owes the Tenant \$3,070.00 comprised of \$3020.00 pursuant to section 51(2) of the Act, and \$50.00 for the cost of the Tenant's application.

I grant the Tenant two monetary orders. These monetary orders may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord and Purchaser are cautioned that costs of such enforcement are recoverable from the parties.

Conclusion

The Purchaser did not use the rental unit for the stated purpose within the 2 Month Notice. The Purchaser must pay the Tenant the amount of two months' rent payable under the tenancy agreement.

The Landlord collected an illegal rent increase and must repay the over payment to the Tenant.

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: June 7, 2017

Residential Tenancy Branch