



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought monetary compensation pursuant to section 51(2) of the *Act*, alleging the new owner (referred to in this Decision as "Landlord") did not use the rental property for the purpose stated on a 2 Month Notice to End Tenancy for Landlord's use, as well as recovery of the filing fee.

The hearing was conducted by teleconference on December 5, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation pursuant to section 51(2) of the *Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

The tenancy agreement was provided in evidence and provided that this tenancy began March 1, 2016. Monthly rent was payable in the amount of \$950.00.

On January 31, 2017 the previous owner, M.C., issued a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice") citing the reasons as follows:

<input checked="" type="checkbox"/> 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 in good faith to occupy the rental unit.

The effective date of the Notice was March 31, 2017. The Tenant testified that she moved out on March 16, 2017.

The Tenant stated that shortly after moving out, she saw an ad for the rental unit dated April 4, 2017. The ad indicated the new owner sought rent in the amount of \$2,000.00 per month. On April 6, 2017 the Tenant sent an email to the new owner indicating that she had seen the ad and writing that she was shocked they were now renting it out when she was informed they intended to occupy the unit.

The new owner, K.G. testified as well. He stated that it was his intention to have his mother move into the basement suite when he purchased the property. He further stated that on April 2, 2017 his mother informed him that she no longer wished to move in. He claimed that the home was more than he needed and he never would have purchased it had he known that she would not move in. He opposed the Tenant's request for compensation on the basis that he had a good faith intention to move his mother in at the time the Notice was issued. A letter from his mother was introduced in evidence as well wherein she confirms she had every intention of moving into the property and opted at the last moment not to.

Analysis

The Tenant applies for compensation pursuant to section 51 which reads as follows.

Tenant's compensation: section 49 notice

51 (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) 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.

The Notice provided that the purchaser asked for vacant possession because the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit. The purchaser, K.G., testified that he and his mother had a good faith intention for her to move into the rental unit, however, shortly after the sale completed she informed him she had changed her mind.

The evidence also confirms that shortly after the tenancy ended and the sale completed the purchaser rented the rental unit for \$2,000.00 per month, more than double the \$950.00 paid by the Tenant in the within action. The Tenant confirmed that the purchaser did not offer to continue her tenancy.

Ending a tenancy is a significant event and must be done in accordance with the *Act*. Section 49 allows a Landlord to regain possession of their rental unit in limited circumstances. A Landlord may not end a tenancy to incentivize a sale, as a tenancy continues after a sale, unless ended in accordance with the *Act*.

Good faith is a requirement when ending a tenancy under section 49. A Tenant receiving a 2 month Notice to End tenancy may question the good faith intentions of a Landlord when disputing a Notice given under section 49; however, the good faith intention of the purchaser is not relevant when considering whether the property "is used for the stated purpose" as provided for in section 51(2).

There was no dispute that the rental unit was not used for the stated purpose for at least six months, as the new owner rented the rental unit at a significantly increased rent rather than having his close family member move into the unit. As such, the Tenant is entitled to compensation pursuant to section 51(2) of the *Act*. As she has been successful in her application I also award her recovery of the \$100.00 filing fee.

Conclusion

The Tenant is granted a Monetary Order in the amount of **\$2,000.00** representing compensation equivalent to double the monthly rent payable under the tenancy agreement (2 x \$950.00) and recovery of the \$100.00 filing fee. The Tenant must serve the Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division) 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: December 11, 2017

Residential Tenancy Branch