



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated June 22, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on her own behalf. All parties provided a solemn affirmation.

The Tenants testified that the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord testified her documentary evidence package was served on the Tenants by Purolator. The Tenants acknowledged receipt. Pursuant to section 71 of the *Act*, I find the parties have been sufficiently served with the above documents for the purposes of the *Act*.

No further issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 26, 2015. The tenancy ended when the Tenants moved out of the rental unit on or about February 28, 2017. During the tenancy, rent was due in the amount of \$1,400.00 per month.

The Tenants moved out of the rental unit because they were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, which had an effective date of February 28, 2017 (the "Two Month Notice"). The Two Month Notice was issued on the following basis:

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 that individual's spouse).

[Reproduced as written.]

However, the Tenants testified to their belief that the Landlord did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. Instead, the Tenants submitted that the rental unit was sold in April 2017, less than two months after the end of the tenancy. The documentary evidence submitted by the parties confirms the rental unit was listed for sale on April 4, 2017, and sold on April 7, 2017.

The Landlord did not dispute that the rental unit sold as alleged by the Tenants. She testified that her parents were immigrating to Canada and had been asked to take part in a medical exam and other pre-arrival planning steps. This lead the Landlord and her parents to believe the application would be approved. However, the immigration application was denied and the Landlord's parents did not move into the rental unit. According to the Landlord, she was unable to re-rent the unit because of restrictions put

in place by the strata, which resulted in financial hardship. As a result, the Landlord made a last minute a last-minute decision to sell the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Tenants claimed to be entitled to \$2,800.00 – double the monthly rent – because the Landlord did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

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.

[Reproduced as written.]

As noted above, the stated purpose for ending the tenancy was to permit the Landlord or a close family member to occupy the rental property. In this case, the undisputed evidence confirms that the Tenants vacated the rental unit in accordance with the Two Month Notice. However, the rental unit was not used for the stated purpose for at least six months. Rather, the property was listed for sale as of April 4, 2017, and sold by April 7, 2017.

I find the Landlord did not use the rental unit for the purpose stated on the Two Month Notice for at least six months beginning within a reasonable period after the effective date of the notice. Accordingly, I find the Tenants are entitled to compensation equivalent to double the monthly rent under section 51 of the *Act*.

Having been successful, I also find the Tenants are entitled to recovery the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Tenants monetary order in the amount of \$2,900.00, which is comprised of \$2,800.00 in compensation and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,900.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 7, 2017

Residential Tenancy Branch