



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated July 26, 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 granting recovery of the filing fee; and
- other unspecified relief

The Tenants attended the hearing on their own behalves. The Landlord named on the Application was represented at the hearing K.L., an agent. The owner of the rental property also attended the hearing. During the hearing, K.L. advised that the contractual relationship between the owner and the named Landlord ended soon after the Tenants vacated the rental property. All parties agreed it would be appropriate to add the name of the owner as Landlord, and to remove the name of the property management company. Pursuant to section 64 of the *Act*, I amend the Application accordingly. Hereafter, the term "Landlord" is used to reflect the individual Landlord only. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenants confirmed service of the Application package and subsequent documentary evidence on the property management company by registered mail and by hand, respectively. The Landlord confirmed he received the Application package and documentary evidence, and has had an opportunity to review and consider it.

The agent of the property management company confirmed the documentary evidence upon which the Landlord intended to rely was served on the Tenants by registered mail. The Tenants confirmed receipt.

No issues were raised with respect to service and receipt of the above documents. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents. The parties were provided with a full 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 and to which I was referred; 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 granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began in or about 2013. The tenancy ended after the Tenants were served with a notice to end tenancy for landlord's use property, which had an effective date of January 31, 2017 (the "Two Month Notice"). The Tenants moved out of the rental unit on or about February 1, 2017. The Tenants testified that although they considered disputing the Two Month Notice, they did not. During the tenancy, rent in the amount of \$2,820.00 per month was due on the first day of each month.

The Tenants claimed to be entitled to additional compensation, pursuant to section 51(2) of the *Act*. They alleged the Landlord did not do what was indicated on the Two Month Notice. During the hearing, the parties acknowledged that the Two Month Notice, a copy of which was not submitted into evidence, was issued on the basis that the Landlord or a close family member intended in good faith to occupy the rental unit. However, the Tenants testified that they returned to the neighbourhood in the weeks after moving out. Former neighbours advised that no one was living in the rental property, and the Tenants observed that snow on the rental property appeared to be undisturbed.

In addition, the Tenants also became aware that the property had been listed for sale after the end of the tenancy. Copies of an online real estate listing were submitted with the Tenants' documentary evidence. They attended the property on April 22, 2017 – less than two months after the tenancy ended – and took photographs. Copies of the photographs were submitted with the Tenants' documentary evidence. They testified the property had been renovated and set up to look like a show home.

The Landlord acknowledged his daughter did not move into the rental property. She was accepted to a school closer to the Landlord's home out of province and decided to live there. The Landlord also testified that after renovations were completed in or about March 2017, the rental property was listed for sale in April 2017. Ultimately, the property sold at the end of August 2017.

The Tenants claimed to be entitled to recover a number of moving expenses, which were summarized on a table. These expenses included bridge tolls, dance school cancellation fees,

mail forwarding, gas, time spent looking for new accommodations, and packing supplies. These expenses totaled \$6,235.67.

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 \$5,640.00, which they submitted represents an amount to which they are entitled because the Landlord did not use the rental unit for the stated purpose for at least 6 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 confirmed that the Tenants were served with the Two Month Notice on November 7, 2016. In accordance with the Two Month Notice, the Tenants vacated the rental unit on or about February 1, 2017. However, I find the Landlord or a close family member did not occupy the rental property. Rather, the property was renovated in or about March 2017, listed for sale in April 2017, and sold by the end of August 2017.

I find the Landlord did not take steps to accomplish the stated purpose for ending the tenancy for at least six month beginning within a reasonable period after the effective date of the Two Month Notice. Accordingly, I find the Tenants are entitled to compensation under section 51(2) of the *Act*.

With respect to the Tenants' claim for moving expenses, I find there is insufficient evidence to conclude they are entitled to the amount sought. As confirmed during the hearing, the Tenants

did not dispute the Two Month Notice, despite their concerns about the Landlord's motivation. This aspect of the Tenants' Application is dismissed.

However, in light of the above, I find, pursuant to section 67 of the *Act*, that the Tenants have demonstrated an entitlement to a monetary order in the amount of \$5,740.00, which is comprised of \$5,640.00 in additional compensation and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$5,740.00. The monetary 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: January 31, 2018

Residential Tenancy Branch