



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable where a landlord does not use a rental unit for the purpose stated on a *2 Month Notice to End tenancy for Landlord's Use of Property*, pursuant to section 51(2) of the Act. The tenant appeared at the hearing; however, the landlord did not.

The tenant testified that she sent the hearing documents to the landlord via registered mail on September 22, 2017 and the registered mail was successfully delivered. The tenant orally provided a registered mail tracking number and a search of the tracking number showed that the registered mail was delivered to the landlord on September 25, 2017. I was satisfied the landlord was duly served with notification of this proceeding.

The landlord had written a letter to the Residential Tenancy Branch requesting the hearing be postponed due to physical and mental health issues that have resulted from a kidney transplant that took place in January 2018.

The Rules of Procedure in effect at the time this application was filed provide the following rules with respect to commencement of a dispute resolution proceeding and seeking to reschedule or adjourn the proceeding. I have reproduced the relevant sections below:

Rescheduling

5.1 Rescheduling of a dispute resolution hearing by agreement not less than 3 days before the hearing

The Residential Tenancy Branch will reschedule a dispute resolution hearing if signed written consent from both the applicant and the respondent is received by the Residential Tenancy Branch directly or through a Service BC office not less than 3 days before the scheduled date for the dispute resolution hearing.

5.2 If agreement to reschedule the dispute resolution hearing cannot be obtained

When agreement to reschedule a hearing cannot be reached, a party or the party's agent may make a request at the hearing to adjourn the hearing under rule 7.8 [*Adjournment after the dispute resolution hearing begins*].

During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Adjourning a hearing

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

The landlord did not have the tenant's written consent to reschedule the hearing. Accordingly, the hearing commenced at the scheduled time. The landlord, or an agent for the landlord, did not appear at the hearing to request an adjournment. I find the landlord's letter in itself does not indicate that the landlord could not have made a brief appearance at the hearing or that he could not have sent an agent to appear on his behalf to request an adjournment. Therefore, I did not adjourn the proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to additional compensation payable under section 51(2) of the Act because the landlord did not use the rental unit for the purpose stated on a *2 Month Notice to End Tenancy for Landlord's Use of Property* dated May 1, 2016?

Background and Evidence

The tenant testified that she and her family had been occupying the rental unit and were paying rent of \$800.00 per month. The landlord had sought to increase the rent to \$1,000.00 and when the tenant disagreed the parties had a dispute resolution proceeding and the tenants were successful. After that proceeding, the landlord served the tenants with a *2 Month Notice to End Tenancy for Landlord's Use of Property* dated May 1, 2016 with a stated effective date of July 2, 2016 ("2 Month Notice"). The 2 Month Notice provided that the reason for ending the tenancy was that the rental unit will be occupied by the landlord or landlord's close family member. The tenants filed to dispute the 2 Month Notice (file number referenced on the cover page of this decision) and a hearing was held on June 6, 2016. For that hearing, the landlord presented evidence to show that he intended to use the rental unit for home hemodialysis due to his advanced kidney failure. The tenant stated that during that hearing the Arbitrator noted that the landlord had strong evidence to support of the 2 Month Notice and an agreement was reached to give the tenant until September 30, 2016 to vacate the rental unit. The tenant did not provide a copy of the previous dispute resolution decision but the file number was referenced in the documentary evidence before me.

The tenant submitted that in December 2016 she saw advertisements for the rental unit and in early January 2017 the neighbour witnessed two men moving into the rental unit. The tenant provided copies of the advertisements and a letter written by the neighbour who witnessed two men moving into the rental unit. The tenant stated that she also saw two cars parked in the parking spots the tenants used to use when they rented the rental unit.

Analysis

Upon review of the previous dispute resolution proceeding held on June 6, 2016 I note that the parties had mutually agreed to withdraw the 2 Month Notice and end the tenancy effective September 30, 2016 by mutual agreement.

The decision issued on June 6, 2016 by the Arbitrator presiding over the previous dispute resolution proceeding provides, in part:

All named parties attended the hearing. During the hearing, the parties expressed an interest and were successful in resolving this dispute by mutual agreement. I agreed to assist the parties in settling their dispute in accordance with section 63 of the *Act*.

Pursuant to section 63 of the *Act*, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing

the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties reached an agreement to settle their dispute under the following final and binding terms:

1. The landlord agrees to withdraw the 2 Month Notice to End Tenancy dated May 1, 2016.
2. The landlord and tenants agree **that this tenancy will end no later than 1:00 p.m. on September 30, 2016**, and,
3. The landlord will receive an **Order of Possession** effective **1:00 p.m. on September 30, 2016**.
- ...
6. The tenants are entitled to receive from the landlord on or before September 30, 2016 an amount that is equivalent of one month's rent payable under the tenancy agreement. This amount may be withheld by the tenant's from the rent for September 2016 or the last month's rent if the tenant's vacate earlier than September 30, 2016.
- ...

Each party confirmed that they understood the terms of the agreement. The parties agreed that these particulars comprise the full and final settlement of all aspects of this dispute.

This Decision and Settlement Agreement is final and binding on both parties.

[Reproduced as written with some irrelevant portions omitted for brevity]

Neither the tenant nor the landlord requested a correction or review of the above described decision. Accordingly, I find the agreement reached by the parties on June 6, 2016, as recorded by way of the decision issued on June 6, 2016 remained a final and binding agreement for parties.

Based on the mutual agreement recorded on June 6, 2016, I find the 2 Month Notice dated May 1, 2016 was withdrawn by mutual agreement of both parties. Where a notice to end tenancy is withdrawn by mutual consent the notice no longer has any force or effect.

The compensation sought by the tenant under this Application applies in cases where a landlord does not use the rental unit for the purpose stated on the 2 Month Notice that brought the tenancy to an end. Since the 2 Month Notice was withdrawn, and the parties negotiated a different date for the tenancy to end, I find the tenancy ended by mutual agreement. The mutual agreement entered into on June 6, 2016 reflected the compensation the tenants were entitled to receive and the tenant confirmed that she occupied the rental unit until September 30, 2016 and

did not pay any rent for the month of September 2016. Accordingly, I am satisfied that the tenant received the compensation she was entitled to receive based on the parties mutual agreement to end tenancy.

In light of the above, I find the tenant is not entitled to compensation under section 51(2) of the Act and I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application has been dismissed in its entirety.

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: April 12, 2018

Residential Tenancy Branch