



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL MNDC FF SS

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on September 20, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee; and
- an order permitting the Tenants to serve documents in a different way than required by the *Act*.

The Tenants attended the hearing and were accompanied by D.R., who did not participate in the hearing. The Landlords attended the hearing on their own behalves. The parties provided affirmed testimony.

The Tenants confirmed service of the Application package and documentary evidence by registered mail on September 23, 2018. The Landlords acknowledged receipt. The Landlords testified the documentary evidence upon which they intended to rely was served on the Tenants by regular mail on April 3 and 6, 2018. The Tenants acknowledged receipt. No issues were raised with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

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 and to which I was directed; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

During the hearing, the Tenants confirmed they vacated the rental unit on or before July 31, 2017. Accordingly, it has not been necessary for me to consider the Tenants' request for an order cancelling the notice to end tenancy for landlord's use of property. The tenancy has ended. This aspect of the Application is dismissed, without leave to reapply.

In addition, the parties acknowledged receipt of the documents upon which each intended to rely. Accordingly, it has not been necessary for me to consider the Tenants' request for an order permitting them to serve documents in a different way than required by the Act. This aspect of the Application is dismissed, without leave to reapply.

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 confirmed the tenancy began on July 1, 2012. At that time, the Tenants occupied the lower portion of the property. On or about February 1, 2013, the Tenants moved into the upper portion of the property, at which time rent increased from \$1,500.00 per month to \$2,000.00 per month. The Tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 23, 2017 (the "Two Month Notice"). The Tenants vacated the rental unit on or about July 31, 2017. The security deposit and pet damage deposit were dealt with at the end of the tenancy and no outstanding issues remain.

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, which was issued on the following basis:

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.

[Reproduced as written.]

The Tenants testified the Landlords performed some renovations to the property and re-rented the units. In support, the Tenants submitted an undated copy of a Craigslist posting advertising the property for rent.

In reply, the Landlords testified it was their intention to make significant changes and improvements to the rental property. In written submissions provided with the Landlord's documentary evidence, they wrote: "Our request for vacant possession was based on the fact that we were going to perform major renovations to the entire interior of the house with my wife [W.J.H.] looking to relocate to the Island and work with the branch office on the island." The Landlords testified they were unable to renovate as planned because an anticipated employment opportunity for W.J.H. fell through. However, in support of their testimony, W.H.S. referred me to a letter from their realtor, D.A., dated March 20, 2018, which advised that the Landlords "had always intended to have a rental property with the option of [W.J.H.] living in one of the suites if needed."

Despite the Landlords' intentions, they acknowledged the property was re-rented as claimed. In fact, tenancy agreements submitted with the Landlords' documentary evidence confirmed the lower unit was re-rented as of October 1, 2017, and the upper unit was re-rented as of November 1, 2017.

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 \$4,000.00 because the Landlords 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 Landlords or a close family member to occupy the rental property. It was not issued on the basis that anticipated demolition, renovations, or repairs required the rental unit to be vacant. In this case, the undisputed evidence confirms that after improvements were made to the rental property, the lower and upper units were re-rented effective October 1 and November 1, 2017, respectively.

I find the Landlords did not use the rental unit for the purpose stated on the Two Month Notice for at least 6 months beginning within a reasonable period after the effective date of the notice. Accordingly, I find the Tenants are entitled to compensation under section 51(2) of the *Act*. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$4,100.00, which is comprised of \$4,000.00 in additional compensation pursuant to section 51(2) of the *Act* and \$100.00 in recovery of the filing fee paid to make the Application.

Conclusion

The Tenants are granted a monetary order in the amount of \$4,100.00. 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: April 19, 2018

Residential Tenancy Branch