



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on April 26, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

One of the Tenants, C.G., attended the hearing. The previous owner of the rental unit, M.D., also attended the hearing. The new Landlord and owner, S.E., attended the hearing with her lawyer, T.D. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Counsel for the new owner stated that the old owner should not be liable for anything that arises out of this hearing because he issued the 2-Month Notice to End Tenancy under the direction of the new owner/purchaser, who asked for vacant possession of the rental unit upon completion of the sale. Based on a review of the evidence and testimony, I agree and find that the previous owner is not liable for any compensation that could arise out of the purchaser's breach of section 51 of the Act. Should any

monetary orders be issued as part of this hearing, they will be issued against the current owner and landlord, herein referred to as the "Landlord".

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,150.00 per month. The 2-Month Notice to End Tenancy (the Notice) was provided into evidence. This Notice was given to the Tenants around May 25, 2017, and the effective date was July 31, 2017. On page 2 of the Notice, the Landlord selected the following ground as the basis for the Notice:

- 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 Tenant stated that she did not want to move, and would have liked to stay if she could have.

The Landlord stated that she asked for vacant possession of the rental unit in good faith because at the time she bought the unit, her daughter was going to live there while she was going to school. The Landlord stated that after she bought the rental unit, and issued the Notice, her daughter found out that she had to take courses in a different city. The Landlord stated that her daughter was originally planning on taking the courses online while she was living in the rental unit, but in the end she had to move to Kamloops to finish the coursework.

The Landlord stated that when she found out her daughter was no longer going to move in to the rental unit, she did not know what to do, but after speaking with a property manager, she decided her only option was to post an ad online and re-rent the unit. The Landlord stated that she had to change her plans on the fly after she found out that her daughter could no longer live in the unit as she had initially indicated on the Notice.

The Tenant stated that the Landlord and new owner did not use the rental unit for the purpose stated on the Notice, and as such, she is entitled to 2 month's compensation, pursuant to section 51 of the Act.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking two month's rent in compensation (2 x \$1,150.00) because the purchaser and Landlord of the rental unit did not utilize the unit for the purpose stated on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenants would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

Tenant's compensation: section 49 notice

- 51** (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.

In this case, the previous landlord issued the Notice on May 25, 2017, because the purchaser and current Landlord requested vacant possession so that her daughter could move in. The Landlord acknowledges that she did not use the rental unit for the stated purpose but stated that this was because her daughter's plans changed, not because she was acting in bad faith. I acknowledge that the Landlord's daughter's plans may have changed. However, regardless of why the plans changed, I find it clear that the Landlord did not use the rental unit for the stated purpose for at least 6 months after the effective date of the Notice. As a result, I find the Tenants are entitled to monetary compensation which is equivalent to double the monthly rent payable under the tenancy agreement (2x\$1,150.00).

As the Tenants were successful with their application, I also grant them the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenants a monetary order in the amount of \$2,400.00. This order is issued against the new owner, purchaser, and Landlord, given she was the one who breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$2,400.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced 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: April 27, 2018

Residential Tenancy Branch