



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or compensation under the *Act* pursuant to sections 51 and 67 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:09 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing, and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that they had served the notice of this hearing, and all their evidence, except for a supplementary evidence package, by Canada Post registered mail on December 29, 2017, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

The tenants confirmed that they served the landlord with a supplementary evidence package by Canada Post Xpresspost mail, with signature required, on June 26, 2018. The tenants provided the tracking number as proof of service, which I have noted on the cover sheet of this decision.

As such, I find that the landlord was served with the notice of this hearing and evidentiary materials in accordance with section 89 of the *Act*.

Preliminary Issue – Consideration of Landlord's Submitted Documentary Evidence

The landlord submitted documentary evidence but failed to attend the hearing. The landlord stated in his submission dated July 3, 2018 that he had an “unplanned trip” and would not be able to attend the hearing. Further to this, he noted that he had tried contacting the tenants to request rescheduling this hearing, however, the tenants had not responded.

Rules 5.1 and 5.2 of the Residential Tenancy Branch Rules of Procedure provide the following direction when one party wishes to reschedule a hearing:

5.1 Rescheduling of a dispute resolution hearing by agreement not less than three 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 three 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].

As explained in the Rules noted above, the tenants were not obligated to reschedule their hearing at the request of the landlord. The landlord was required to obtain written consent from the tenants in order to reschedule the hearing. Alternatively, the landlord had the option of making a request to adjourn the hearing pursuant to Rule 7.8, as follows:

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.

In this matter, the landlord was aware of his “unplanned trip” at least 10 days prior to the hearing. If for some reason the landlord was unable to call into the teleconference hearing from his location while he was on his trip, he had the option of arranging for an agent, which could include a family member or friend, to attend the teleconference hearing and act on his behalf to request an adjournment.

As the landlord chose not to exercise these options, I conducted the dispute resolution hearing in the absence of the landlord, in accordance with Rule 7.3, which provides as follows:

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.

Further to this, as the landlord did not attend the hearing to present his evidence, the other party was denied the opportunity to ask questions to rebut the landlord's submitted evidence. Therefore, I applied Rule 7.4 to address the landlord's written submissions and evidence. Rule 7.4 requires:

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.

I find that in accordance with the principles of natural justice and Rule 7.4, I will not consider the landlord's submissions uploaded into evidence as the landlord not did present the evidence for cross-examination by the other party.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as compensation provided under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenants uploaded a copy of the written tenancy agreement into documentary evidence and provided the following undisputed information about the tenancy agreement.

The tenancy began October 1, 2013, as a one-year fixed term tenancy. Once the fixed-term ended, the tenancy converted to a month-to-month tenancy. Monthly rent, payable on the first day of the month, was \$2,500.00 at the start of the tenancy and increased to \$2,667.68 by the end of the tenancy. The rental unit included some furnishings: a queen bed, sofa, and table and

chairs. The tenants stated that they did not return the rental unit keys, finish moving out and complete the condition inspection report until June 1, 2017, and as such they claim that the tenancy did not end until June 1, 2017, at 1:00 p.m.

The tenants stated that on March 21, 2017, they received a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) requiring them to vacate the rental unit by May 31, 2017. The Two Month Notice submitted into documentary evidence by the tenants stated the reason for ending the tenancy as:

The rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

On March 21, 2017, the tenants also received an email from the landlord explaining that he needed the rental unit for his parents "to live in" as his own apartment "doesn't have enough space for them". The tenants submitted the email into documentary evidence in support of their testimony.

The tenants alleged that the landlord did not use the property for this stated purpose but rather that the landlord placed the rental unit for sale by the end of June 2017 and that the property was sold by November 30, 2017.

The tenants submitted documentary evidence including real estate listings of the rental unit, land title transfer information, as well as photographic evidence showing the furnishings in the rental unit on June 1, 2017, when the move out inspection was conducted, compared against pictures taken from the real estate listing posted online at the end of June 2017.

As the landlord did not attend the hearing, the tenants presented unchallenged testimony, pointing to the fact that some of the furniture in the rental unit, such as the queen-sized bed, as well as the table and chairs, are missing in the real estate listing pictures. The tenants stated that this supported their claim that the landlord did not use the rental unit for the stated purpose of having it occupied by his family as there would be nothing for them to sleep on, other than a small sofa in the living room.

The tenants further stated that the provisions of section 51 of the *Act* require that the rental unit must be used for the stated purpose for at least six months' duration. Given that there was no bedroom or kitchen furniture noted in the real estate listing pictures posted at the end of June 2017, and the property was sold by November 30, 2017, the tenants alleged that the landlord did not meet the "at least" six months' duration requirement.

Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice. Recent legislative changes to these sections of the *Act* are not retroactive.

Section 49 of the *Act* stated in part as follows:

- 49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
- (a) not earlier than 2 months after the date the tenant receives the notice...*

Section 51 of the *Act* stated, in part, as follows:

- 51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

...

- (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.***

[My emphasis added]

I accept the tenants' unchallenged testimony and documentary evidence that the rental unit was listed for sale by the end of June 2017, and that the photos from the real estate listings establish that there is no bedroom and kitchen furniture. I also accept that the property title transfer and BC Assessment information submitted into evidence by the tenants accurately noted that the landlord sold the property and that the ownership of the property was transferred on November 30, 2017.

Based on the above accepted facts, I find that it is unlikely that the landlord's close family lived in the rental unit for at least 6 months, due to the lack of furnishings that would reasonably be expected in the rental unit if it was being lived in.

Further to this, as the property was no longer owned by the landlord effective November 30, 2017, it would not be possible for the landlord to have fulfilled the **at least** six months' duration requirement to "occupy" the rental unit. "Occupy" is defined by Black's Law Dictionary as follows:

To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in.

According to the tenants' testimony, they attended at the rental unit on June 1, 2017, to finishing moving out, conduct the move-out inspection with the landlord and to return the rental unit keys. To meet the "at least six months" duration would have required the landlord to have retained possession of the rental unit until December 1, 2017, since November 30, 2017 was the last day of possession by the landlord and is excluded, as explained in section 25(4) of the *Interpretation Act*, RSBC 1996, c. 238

25 (4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

I find that the tenants have presented sufficient evidence to prove their claim, on a balance of the probabilities, which means more likely than not, that the landlord did not use the rental unit for the purposes stated on the Two Month Notice, specifically, that his close family would be living in the rental unit.

I find that the tenants are entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act*. The tenants' monthly rent payable under the tenancy agreement was \$2,667.68. Therefore, the monetary compensation is equivalent to double the monthly rent, for a monetary award of \$5,335.36.

As the tenants were successful in their application, I find that they are entitled to recover the cost of the filing fee in the amount of \$100.00.

Conclusion

I find that the tenants are entitled to a monetary award pursuant to sections 51(2), 67 and 72 of the *Act*, as a result of the landlord's failure to use the rental property for the stated purpose provided on the Two Month Notice.

As such, I grant a Monetary Order in favour of the tenants in the amount of \$5,435.36 being the equivalent of double the monthly rent payable under the tenancy agreement, and recovery of the \$100.00 filing fee.

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: July 30, 2018

Residential Tenancy Branch