



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP - WEST COAST REALTY and 0920429 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 27, 2018 (the "Application"). The Tenants sought compensation under section 51 of the *Residential Tenancy Act* (the "Act"). The Tenants also sought reimbursement for the filing fee.

The Tenants appeared at the hearing. Legal Counsel for the Landlords appeared at the hearing.

Legal Counsel advised that Landlord 1 acted as agent for Landlord 2 in relation to the rental unit. I asked for the position of the parties on adding Landlord 2 as a Respondent in the Application. The Tenants said they only dealt with Landlord 1 but that Landlord 2 could be added as a Respondent. Legal Counsel took no issue with Landlord 2 being added as a Respondent. I amended the Application to include Landlord 2 and this is reflected in the style of cause.

I explained the hearing process to the parties and nobody had questions when asked. The Tenants provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised in this regard.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51 of the *Act*?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement had been submitted as evidence and the parties agreed it is accurate. It is between the Tenants and Landlord 1 regarding the rental unit. The tenancy started December 1, 2011 and was for a fixed term ending November 30, 2012. Rent was \$1,600.00 per month. The parties agreed the agreement was signed on behalf of Landlord 1 and by the Tenants.

Both parties agreed the Tenants moved out of the rental unit May 31, 2016.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") was submitted as evidence. Both parties agreed this is the Notice that was served on the Tenants. It is addressed to the Tenants and relates to the rental unit. It was issued by Landlord 1. It is dated March 28, 2016. The effective date was May 31, 2016. The grounds for the Notice are that the "rental unit will be occupied by the landlord or the landlord's spouse or a close family member...of the landlord or the landlord's spouse". The parties agreed the Notice was served on the Tenants in late March of 2016.

Tenant G.A. testified as follows. The Tenants went by the rental unit after they moved and there was another couple living in the house. This was within two weeks of the Tenants vacating the rental unit. The same couple still lives in the house. The couple are not related to the Landlords. The representative for Landlord 1 had told them the Notice was issued because the daughter of the owner of the rental unit wanted to occupy the house.

Legal Counsel pointed to an Affidavit of H.S. submitted as evidence. It states as follows. Landlord 2 is the registered owner of the rental unit. H.S.'s father-in-law is a Director of Landlord 2. Around February of 2016, H.S. and her family decided they would reside at the rental unit while their home was renovated. Her father-in-law took steps to vacate the rental unit. After the rental unit was vacated, H.S., her father-in-law and her husband attended the rental unit and decided the unit was not in a suitable condition for their family.

Legal Counsel made the following submissions. After the Tenants vacated the rental unit, H.S. and her family decided their home was in better condition than the rental unit. H.S. and her family decided they would not move into the rental unit. The Tenants vacated in May. The rental unit was inspected in June and it was decided it would not work for H.S. and her family. The rental unit was re-rented to non-family members in the first week of July.

Legal Counsel acknowledged that neither the Landlords, nor a close family member, moved into the rental unit. I pointed out that the Landlords were in fact companies. Legal Counsel said the occupant of the rental unit was going to be the son, daughter-in-law and grandson of the Director of Landlord 2. Legal Counsel confirmed that the Notice was issued by Landlord 1 on the instructions of Landlord 2.

Legal Counsel made the following further submissions. The Landlords took a loss when they re-rented the rental unit. The tenancy with the Tenants was a month-to-month tenancy. Legal Counsel took the position this meant the Landlords could have simply given the Tenants a one month notice to end the tenancy. Legal Counsel could not point to what section of the *Act* would have allowed the Landlords to do so.

Legal Counsel made submissions on renovations that were done to the rental unit and H.S.'s home. She submitted that this was relevant as it related to the reason H.S. did not move into the rental unit. She further submitted that the Landlords took many steps to follow through with the stated purpose in the Notice. She said these included H.S.'s home and the rental unit being inspected.

Legal Counsel took the position that the Landlords were only required to comply with either section 51(2)(a) or (b) of the *Act* and that the section does not require that the Landlords comply with both section 51(2)(a) and (b) of the *Act*.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for landlord's use of property in the specific circumstances outlined in the section. The Notice was issued under section 49(3) of the *Act* in force at the time which stated:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. (emphasis added)

Section 51 of the *Act* set out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act* and stated:

(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.

The following was not in dispute. Landlord 1 served the Tenants with the Notice on the instructions of Landlord 2. The grounds for the Notice were that the “rental unit will be occupied by the landlord or the landlord’s spouse or a close family member...of the landlord or the landlord’s spouse”. The Tenants vacated the rental unit May 31, 2016, the effective date of the Notice. Rent at the time was \$1,600.00.

The Landlords are companies and therefore were not entitled to serve a notice to end tenancy pursuant to section 49(3) of the *Act* which only allows landlords who are individuals to do so. I find the Landlords could not have followed through with the stated purpose in the Notice given the Landlords are companies and were not permitted to serve the Notice for the stated purpose in the first place.

Even if the Landlords were permitted to serve the Notice pursuant to section 49(3) of the *Act*, Legal Counsel for the Landlords acknowledged that H.S. never moved into the rental unit and that the rental unit was re-rented to non-family members in the first week of July. This was a month after the effective date of the Notice. I find, based on the evidence of the Landlords and submissions of Legal Counsel, that the Landlords did not use the rental unit for the purpose stated in the Notice for at least six months after the effective date of the Notice. Therefore, the Landlords must pay the Tenants an amount equivalent to two months of rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

Legal Counsel took the position that the Landlords were only required to comply with either section 51(2)(a) or (b) of the *Act*. On a plain reading of this section, it is clear the Landlords are required to compensate the Tenants if either “(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”. I cannot accept that the Landlords were only required to comply with either section 51(2)(a) or (b) of the *Act*.

Legal Counsel submitted that the Landlords took a loss when they re-rented the rental unit; however, this is not relevant. Whether the Landlords took a loss or not, they failed to comply with the *Act* and therefore must compensate the Tenants.

Legal Counsel made submissions, and pointed to evidence submitted, about why H.S. and her family did not move into the rental unit; however, this is not relevant. The legislation applicable at the time the Notice was issued does not allow for the Landlords to be alleviated of their obligations under section 51(2)(a) and (b) based on extenuating circumstances.

Here, the Notice was invalid to begin with. Further, there is no dispute that the Landlords did not use the rental unit for the purpose stated in the Notice for at least six months after the effective date of the Notice. The Tenants are therefore entitled to compensation in the amount of \$3,200.00 pursuant to section 51(2) of the *Act*.

As the Tenants were successful in this application, I find they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$3,300.00 compensation and I grant the Tenants a Monetary Order in this amount.

Conclusion

The Application is granted.

The Tenants are entitled to \$3,200.00 compensation under section 51 of the *Act*. The Tenants are entitled to reimbursement for the \$100.00 filing fee.

The Tenants are entitled to \$3,300.00 compensation and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: August 13, 2018

Residential Tenancy Branch