



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This was an application by former tenants for compensation pursuant to section 51 (2) (b) as a result of a Landlord's Use Notice to End a Tenancy. Both the landlord and one of the tenants, RJ attended the hearing.

Issue(s) to be Decided

Are the tenants entitled to any compensation for the landlord's noncompliance with the Act?

Service and Preliminary Matters:

The landlord admitted service of the tenant's application.

The tenant RJ objected to the landlord's evidence as he stated he received her package on August 29, 2018. Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states:

3.15 Respondent's evidence provided in single package

Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than **seven days** before the hearing.
See also Rules

As the tenant had received the landlord/respondent's evidence within seven days before the hearing I found that it was not late and admissible.

Background and Evidence

RJ testified that the tenancy of the upper unit began on September 1, 2015 with rent in the amount of \$ 2,750.00. The rent included all utilities for the upper and lower units. The tenancy agreement provided that the landlord was permitted to occupy the lower unit at her discretion. About twenty three months prior to the end of the tenancy, the landlord moved into the lower unit and as a result at the initiation of the landlord, the tenants' rent was reduced to \$ 2,500.00 to compensate for any increase in use of the utilities by the landlord.

A notice to end the tenancy for Landlord Use dated January 5, 2018 effective April 1, 2018 was given to the tenants. The Notice was given pursuant to section 49 (3) of the Act which states:

49 (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. (my emphasis added)

The tenants ended the tenancy on February 1, 2018. The landlord paid compensation amounting to \$ 2,500.00, equivalent to one month's rent to the tenants pursuant to section 51 (1) (as it then was) which states:

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.

The tenants now claim that their utilities increased after the landlord occupied the lower unit by more than the \$ 250.00 reduction, and accordingly the one month compensation should have been \$ 2,750.00 not \$ 2,500.00. RJ is therefore claiming the additional \$ 250.00. Additionally RJ claims, that because the landlord did not live in the upper unit the unit she should pay the tenants that extra \$ 250.00 for two months as a penalty. RJ did not provide any evidence of the extra use of utilities.

The tenants are also claiming for additional compensation amounting to two month's rent at \$ 2,750.00 per month pursuant to section 51 (2):

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 2 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RJ claimed that the landlord did not live in the unit as she had other properties elsewhere, used a Kelowna address for service of documents as stated on the Notice to End the Tenancy and had an Alberta telephone number. RJ admitted that he could not prove that anyone other than the landlord lived in the unit after the tenants moved out.

The landlord testified that the rent was reduced to \$ 2,500.00 by agreement and therefore the tenants are not entitled to any additional compensation for the use of utilities.

Secondly the landlord testified that she moved from the lower into the upper unit on February 3, 2018 and that no one but her has occupied the upper unit to date. She since rented the lower unit to third parties. She used a Kelowna address for service as that's where her son resides and that she continues to have an Alberta cell phone number.

Analysis

I find that the rental amount in the tenancy agreement was varied by mutual agreement of the parties as evidenced by their conduct: the offer of the reduction in rent by the landlord and the acceptance by the tenants as confirmed by their payment of the reduced sum of \$ 2,500.00 for twenty-three months. Accordingly I find that the correct amount of compensation amounting to \$ 2,500.00 was paid by the landlord to the tenants. I have dismissed the tenants' application for any extra compensation for the required one month's compensation pursuant to section 51 (1).

Section 49 (3) states:

49 (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. (my emphasis added)

I find that as a matter of law the word **occupy** in section 49 (3) means exclusive **possession**. In other words as long as the landlord does not permit any third parties to possess the unit for a period of six months after the end of the last tenancy, the landlord has complied with section 49 (3) and no additional or punitive compensation pursuant to section 51 (2) of the Act would be payable to the tenants herein.

Here RJ admitted that he was not able to prove that any other person other than the landlord occupied the unit. Furthermore I accept the landlord's evidence as credible that she moved into the unit as of February 2018 and that no other person other than her has resided in that unit thereafter. I therefore find that the landlord has more than complied with the requirement of section 51 (2) of the Act. Accordingly I have dismissed the tenants' claim for two month's rent as compensation pursuant to section 51 (2)

Conclusion

I have dismissed all of the tenants' claims herein. There will not be any recovery of the filing fee herein.

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: September 06, 2018

Residential Tenancy Branch