



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on July 19, 2018 wherein the Tenants requested monetary compensation pursuant to sections 51(2) and 67 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference at 1:30 p.m. on November 23, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord confirmed that his name was spelled wrong on the Tenants' Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Act* I amend the Tenants' Application to correctly name the Landlord.

The parties confirmed their email addresses during the hearing and their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Are the Tenants entitled to compensation from the Landlord equivalent to two months' rent pursuant to section 51(2) of the *Act*?

Background and Evidence

G.S. testified as follows. She confirmed that the tenancy began January 1, 2010. Monthly rent at the time the tenancy ended was \$600.00 per month.

On November 12, 2017 the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reasons cited on the Notice were as follows:

☒ 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 confirmed that the Landlord named in this action was the seller of the residential property.

Introduced in evidence was the third page of the five page "Contract of Purchase and Sale" for the rental property. Notably, the documents relating to the sale were redacted by the Landlord such that the Tenants could not identify the buyer.

Documentary evidence submitted by the Landlord indicated that the original closing date of the property sale was changed from January 15, 2018 to January 31, 2018 and then to August 30, 2018.

G.S. testified that they moved from the rental property on January 31, 2018.

G.S. stated that after they moved out, the property remained empty and to her knowledge it remains empty.

G.S. submitted that the property was not used for the stated purpose and as such the tenancy could have continued. She noted that the amount of rent they have paid since the tenancy ended is substantially more than the amount they paid in the subject

tenancy, and that the stress caused by the move was so significant she believes it contributed to her husband's heart attack.

In response to the Tenants' submissions, the Landlord's son testified as follows. He testified that the extension of the sale continued because the purchasers' did not have all the funds. Initially the closing date was January 15, 2018, it was then extended as follows:

- from January 15, 2018 to January 31, 2018;
- from January 31, 2018 to May 15, 2018;
- from May 15, 2018 to August 30, 2018;
- from August 30, 2018 to October 30, 2018; and,
- from October 30, 2018 to November 30, 2018.

The Landlord's son confirmed that title has not yet transferred.

The Landlord's son further confirmed that the property is vacant and has been vacant since the tenancy ended. He also stated that the Tenants had already moved out by the time the first extension was granted such that they could not offer the rental to them while they waited for the sale to complete.

Analysis

The Tenants applied for monetary compensation pursuant to section 51(2) of the *Act* which at the time the Notice was issued provided as follows:

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.

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. The current version of section 51(2) provides that a tenant is entitled to *12 months* compensation, as opposed to 2 months. However as the Notice was issued prior to May 17, 2018, the Tenants in the case before me are only entitled to compensation based on the former version (2 months).

I accept the Landlord's evidence that the delay in the sale of the property has occurred due to financing issues with the buyers. However, the evidence confirms that the sale of the rental unit has not completed and as such the buyers have not occupied the rental unit. As this was the purpose stated on the 2 Month Notice to End Tenancy, I find that the Landlord did not use the rental unit for the stated purpose.

Consequently, and pursuant to section 51(2) of the *Act*, the Tenants are entitled to the two month's rent as claimed. I therefore award them the sum of **\$1,200.00**. I grant the Tenants a Monetary Order in the amount of \$1,200.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenants' Application is granted. They are entitled to the sum of \$1,200.00 representing two months' rent pursuant to section 51(2) of the *Act*.

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: November 23, 2018

Residential Tenancy Branch