



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 in response to an application filed by the tenant October 16, 2018 for a Monetary Order for compensation pursuant to 51(2) of the *Residential Tenancy Act [pre-May 17, 2018]* (the Act), and to recover the filing fee.

Both parties attended the hearing. The parties provided testimony and were given opportunity to make relevant submissions. The parties were also afforded opportunity to mutually resolve their dispute to no avail. The tenant provided that they served the landlord with the application and their evidence which the landlord acknowledged receiving. Both parties acknowledged exchanging evidence as has been submitted to this proceeding. The hearing advanced on the merits of the tenant's application. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed pursuant to Section 51(2) of the Act?

Background and Evidence

This tenancy started June 30, 2017 and ended April 05, 2018. The rent payable under the tenancy agreement was \$2333.99 per month.

The undisputed evidence in this matter is that the tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated

February 20, 2018 having an automatically adjusted effective date of April 30, 2018. The stated purpose in the Notice was pursuant to Section 49 (6)(a)or(b) as follows,

the landlord has all of the necessary permits and approvals required by law (and intends in good faith) to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant testified that the landlord has never secured any permits or approvals to demolish, renovate or repair the rental unit, nor has the landlord demolished, renovated, or repaired the rental unit by the date they filed their application.

The landlord provided that in February 2018 they applied to the City for a “tree permit”, for the removal and replacement of a tree on the residential property, but that the permit has never been obtained and remains “in process”. The landlord provided a payment demand notice for the permit, which the tenant argued clearly states it is not a permit or authorization to enact work. The landlord testified they issued the 2 Month Notice to End on the basis of safety concerns in the event the tree was felled. The landlord provided a statement from a “local builder” stating they suggested that the rental unit be vacated due to disruption, inconvenience, and potential injuries to the tenants if the rental unit was not vacant upon felling the tree due to the unpredictable and dangerous nature of the work. None the less, the landlord testified they did not receive a permit for felling the tree; nor have cut or felled the tree. The tenant submitted evidence the landlord had listed the rental unit for sale, which the landlord acknowledged, but that it was solely for the purpose of “testing the market”. The landlord also testified they were working with a designer for potential work on the rental unit; and, recently re-rented the unit to avoid ramifications from the City’s ‘empty home tax’ initiative. But moreover and relevant to this matter, the landlord confirmed by their testimony that since the tenant vacated they have never demolished, renovated, or repaired the rental unit as stated they intended in good faith to do by their Notice to End the tenancy.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

It must be known that because the tenant received the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use prior to May 17, 2018 the tenant is effectively claiming

compensation under **Section 51(2)** of the Act pre-May 17, 2018, which provided as follows: [emphasis added]

Tenant's compensation: section 49 notice

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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 matter the landlord may well have had a good faith intention to obtain permits and/or approvals, and embark on certain plans for the rental unit, including felling a tree. However, the relevant evidence of the landlord is that 10 months after the effective date of the 2 Month Notice to End Tenancy for Landlord's Use the landlord has not secured permits or other required approvals, nor fulfilled intentions to demolish, renovate, repair, or other work associated with the stated purpose in the Notice for ending the tenancy. I find the tenant made their application 5.5 months after the effective date of the Notice to End and I find that period of time as a reasonable period in which steps ought to have been taken toward accomplishing the stated purpose for ending the tenancy. I have not been presented with evidence proving the landlord, to date, has taken such measures. Effectively, I find that the landlord did not take steps to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable period after the effective date of the Notice.

As a result of all the above, I find the tenant has established an entitlement under **Section 51(2)(a)** of the Act in the prescribed amount equivalent of double the monthly rent payable under the tenancy agreement of \$2333.99. Therefore, I grant the tenant double this amount in the sum of \$4667.98. The tenant is further entitled to recovery of the \$100.00 filing fee for this application for a total award of **\$4767.98.**

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$4767.98**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted.

This Decision is final and binding.

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: February 13, 2019

Residential Tenancy Branch