



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks compensation under sections 51 and 67 of the Act, and compensation for the filing fee under section 72 of the Act.

A dispute resolution hearing was convened on February 14, 2019 and the tenant attended. The landlord's former agent attended briefly, and then was excused from the proceedings; the former agent explained that he does not, and no longer represents the landlord, and as such is a third party to these proceedings. After confirming that the sole legal landlord is landlord W.I., I amended the application and style of cause to reflect this. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord did not attend.

The tenant testified that she served the Notice of Dispute Resolution Proceeding on the landlord at his address of service by way of Canada Post registered mail. Given the above, I find that the landlord was served in compliance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision. I further note that Rule 7.4 of the *Rules of Procedure* requires that 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." As such, I will not consider any of the landlord's documentary evidence or written submissions regarding this matter.

Issues to be Decided

1. Is the tenant entitled to compensation under section 51 of the Act?
2. Is the tenant entitled to compensation under section 72 of the Act?

Background and Evidence

The tenant testified that the tenancy commenced on September 1, 2011. The tenancy was a yearly fixed-term tenancy that was renewed yearly. Copies of some of the written tenancy agreements were submitted into evidence by the tenant. Monthly rent at the time the tenant vacated the rental unit was \$1,886.00.

The landlord's agent emailed the tenant in June 2017, advising her that she would have to vacate the rental unit by the end of April 2018, as the landlord was going to move into the rental unit. On March 14, 2018, the agent sent a reminder email to the tenant, in respect of her having to vacate the rental unit. At no time did the landlord provide the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (Form #RTB-32). All communication between the landlord and the tenant regarding the tenancy being ended was by e-mail. The reason given, according to the tenant, was that "the owner is moving into" the rental unit.

The tenant vacated the rental unit on May 3, 2018, on which date she handed over the keys and received a return of the security deposit. Two weeks later, the landlord contacted the tenant and asked her if she would sign a Mutual Agreement to End a Tenancy document, which she declined to do. Apparently, the landlord required this document for taxation purposes.

Shortly thereafter, the landlord listed the rental unit on Craigslist as being available for rent. A copy of the Craigslist ad was submitted into evidence. The ad showed that the rental unit was available for rent July 20, 2018.

On May 29, 2018, the rental unit (a condominium in a high-rise building in downtown Vancouver) was listed for sale. The property sold on July 6, 2018. The tenant submitted a copy of a property listing information document from the online real estate service Zolo.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant seeks compensation under section 51 of the Act. This section reads as follows (as it was then in force in June 2017 and on March 14, 2018, the date on which the landlord or his agent gave notice to end the tenancy):

(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 stated purpose for ending the tenancy, though not indicated on any notice—a notice which the landlord failed to serve as required by the Act—was that that the landlord intended to move into the rental unit. This is a frequent reason for landlords to end a tenancy and is set out in section 49(3) of the Act which reads as follows: “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.”

In this case, the landlord listed the property for sale within a mere 26 days after, and sold the property 64 days after, the tenant vacated the rental unit. I find that listing the property and then selling it within this extremely short time period clearly establishes that the steps were not taken to accomplish the stated purpose for ending the tenancy.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for compensation

under section 51 of the Act. As such, I award her compensation equivalent to two months' rent in the amount of \$3,772.00, pursuant to section 67 of the Act.

As the tenant was successful in her application I award her additional compensation in the amount of \$100.00 for recovery of the filing fee, pursuant to section 72 of the Act.

Conclusion

I grant the tenant a monetary order in the amount of \$3,872.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 14, 2019

Residential Tenancy Branch