



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT OT

Introduction

This is an application by the tenant under the *Residential Tenancy Act* (“the *Act*”) for a monetary order for compensation regarding the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for reimbursement of the filing fee.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the notice of dispute resolution package by registered mail on November 29, 2017. The tenant provided the registered mail tracking number. The tenant testified that she sent her evidence package to the landlord by regular mail on February 4, 2019.

The landlord testified that she sent her evidence to the tenant by regular mail on February 15, 2019. The tenant testified that she received the landlord’s evidence on February 21, 2019, being 8 days before the hearing.

Neither party raised issues of service. I find that both parties were served in accordance with the *Act*.

The landlord’s Two Month Notice to end tenancy for landlord’s use of the property was served on November 20, 2017 with a move out date of February 7, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation pursuant to sections 51 and 67?

Is the tenant entitled to recovery of the filing fees of this application from the landlord pursuant to section 72?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The tenant testified that the tenancy started as a fixed term tenancy on October 18, 2016 with an end date of October 18, 2017. The tenancy continued as a month-to-month tenancy after October 18, 2017. The rent was \$1,000.00 per month, due on the 8th day of each month. The tenant provided a copy of a portion of the tenancy agreement.

The Two Month Notice stated that the reason for ending the tenancy was so that the landlord, or the landlord's close family, could move into the rental unit. The tenant testified that she moved out of the rental unit early on January 8, 2018. The tenant has applied for a monetary award of \$2,969.93.

The tenant testified that she did not believe that the landlord intended to occupy the property as stated in the Two Month Notice. The tenant testified that the landlord was living at her son's residence when she issued the Two Month Notice. However, after the tenant moved out of the rental unit, the tenant testified that the landlord continued to live at her son's residence.

The tenant provided multiple videos showing the vehicle which she claims is the landlord's vehicle parked at the landlord's son's residence after the effective date of the Two Month Notice. The tenant also provided multiple videos showing that the landlord's vehicle was not parked at the rental unit. The tenant argued that these videos proved that the landlord did not move into the rental unit.

The tenant provided a note from her friend, CW, which states that CW went to the rental unit on June 28, 2018 and spoke with the occupants. The note says that a boy opened the door and CW spoke with the boy's mother who identified herself as the landlord's niece. The note states that the occupant stated that the landlord spends time

at both the rental unit and her son's property. The note also stated that the occupant said that she intended to purchase the house from the landlord.

The tenant claimed compensation of two month's rent in the amount of \$2,000.00, along with moving expenses. The tenant provided a receipt for \$220.93 for rental of a moving truck and \$640.00 for moving services.

The landlord testified that she has resided in the rental unit since the tenant moved out. The landlord testified that she sleeps at the rental unit and her furniture is at the rental unit.

The landlord provided numerous documents dated between February and July 2018 which state that her address is the rental unit including homeowner's insurance, a cancelled cheque, a property tax assessment, a Statement of Old Age Security, a driver's license renewal form, a BC Driver's License, and electric bills.

The landlord testified that resided at the rental unit from January to July 2018. However, she testified that she was frequently not home during that time period because she made multiple trips for medical treatment and to visit family in multiple locations.

The landlord testified that the location of her car does not reflect her residence because her grandson, WH, has been using her car. The landlord provided a sworn affidavit from WH stating that he resides at the landlord's son's property and he has been using the landlord's vehicle to attend trade school.

The landlord testified that her niece did move into the property with her in June 2018 and she continues to reside there. The landlord testified that they share the house. The landlord testified that her niece does want to purchase the property from the landlord but the landlord testified that she has not sold the property and the property is not for sale. The landlord also testified that her niece is not financially able to purchase the property from the landlord.

Analysis

The tenant is seeking compensation of \$2,860.93 under section 51 of the *Act*, which states in part, as follows:

51(2) ..., 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 ... **must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.**

[My emphasis added]

I find that the effective date of the Two Month Notice was February 7, 2018 and that the stated reason for the Two Month Notice was so that the landlord, or the landlord's close family, could move into the rental unit. Accordingly, the tenant can establish a claim for compensation under section 51(2) of the *Act* if the tenant can prove that either the landlord did not move into the property within a reasonable period of time after February 7, 2018 or the landlord did not reside at the property for six months starting within a reasonable period after February 7, 2018.

Pursuant to *Residential Tenancy Branch Rules of Procedure ("RTB Rules")*, Rule 6.6 the applicant, in this case the tenant, has the onus of proof to prove her case on a balance of probabilities. This means that *RTB Rule* 6.6 requires the tenant to prove that, more likely than not, the facts occurred as claimed in order to prevail in her claim.

Based upon the testimony and evidence submitted, I find that the tenant has failed to provide sufficient evidence to establish that either the landlord did not move into the property within a reasonable period of time after February 7, 2018 or the landlord did not reside at the property for six months starting within a reasonable period after February 7, 2018.

I find that the video evidence submitted by the tenant does not prove that, more likely than not, that the landlord did not reside at the property from February to July 2018. There are many possible explanations as to why the landlord's vehicle was not at the rental unit during that time period. The landlord provided an explanation, supported by an affidavit from her grandson, which explained that her grandson was using the vehicle during that time period. I accept the landlord's testimony on the matter.

In addition, the note from CW fails to establish that, more likely than not, that the landlord was not residing there. This note is not sufficient to prove that the landlord did

not occupy the property during the relevant time period. The stated reason in the Two Month Notice is that the landlord's will occupy the property for her personal use. There is no requirement that the landlord must exclusively reside at the rental unit. The statement from the landlord's niece is consistent with the landlord occupying the property as stated in the Two Month Notice.

Furthermore, the landlord has provided multiple documents stating that the rental unit was her address during the time period of February to July 2018.

For the above reasons, I find that the tenant has failed to provide sufficient evidence to prove her claim. Accordingly, I dismiss the tenant's application for compensation pursuant to section 51(2) of the *Act*.

Since the tenant has not been successful in this matter, I dismiss the tenant's request for reimbursement of the filing fee.

Conclusion

I dismiss the tenant's application for compensation pursuant to section 51(2) of the *Act*.

I dismiss the tenant's request for reimbursement of the filing fee.

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: March 07, 2019

Residential Tenancy Branch