



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 as a result of the Tenants' Application for Dispute Resolution, made on December 12, 2018 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants were both represented at the hearing by C.T. The Landlord attended the hearing and was assisted by I.M. The Tenant, Landlord, and I.M. each provided affirmed testimony.

On behalf of the Tenants, C.T. testified the Application package was served on the Landlord by registered mail on December 13, 2018. The Landlord acknowledged receipt. In addition, the Landlord testified that documentary evidence being relied upon was served on the Tenants by registered mail. Although unable to confirm the date of service, the Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were ready to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Determined

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order granting recovery of the filing fee.

Background and Evidence

The parties agreed the tenancy began on September 1, 2015, and ended on August 21, 2018. During the tenancy, rent was due in the amount of \$900.00 per month. The Tenants paid a security deposit of \$500.00, which was returned to the Tenants.

On behalf of the Tenants, C.T. testified the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, which was served on and received by the Tenants on May 16, 2018 (the "Two Month Notice"). The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or a close family member. Specifically, C.T. testified the Tenants were told the Landlord's sister and nephew would be moving into the rental unit. However, the Tenants claim the rental unit has been rented to a new tenant.

In support of these allegations, the Tenants submitted a screen print from a text message, dated October 2, 2018. In it, a neighbour reported that the unit was re-rented to someone who is "white with Alberta license plate." The Tenants also submitted a photograph of a white vehicle with an Alberta license plate parked in front of the rental property. In addition, the Tenants submitted 2 brief dashboard camera videos of a white vehicle that appears to have parked on the street, and someone carrying furniture into the rental property.

In reply, the Landlord and I.M. testified that the Landlord's sister did move into the rental unit briefly but had to travel to India when her husband became ill. Her husband's illness required her to stay longer than anticipated and her arrangement with the Landlord was canceled. In addition, the Landlord and I.M. testified that the Landlord's nephew obtained a job on a farm in a nearby community and decided to live closer to his work. The Landlord acknowledged the unit was re-rented but advised that his financial circumstances did not permit him to leave the space vacant. The Landlord testified the rental property was sold on February 28, 2019.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Effective May 17, 2018, changes to section 51 of the *Act* increased the amount of compensation available to tenants if a landlords does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. If applicable, a tenant is entitled to an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement, unless there are extenuating circumstances.

Before May 17, 2018, section 51 of the *Act* provided compensation for tenants if a landlord did not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. In these circumstances, a tenant is entitled to an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Extenuating circumstances will not relieve a landlord of the obligation to pay compensation.

In the case before me, the parties agreed the Tenant was served with and received the Two Month Notice on May 16, 2018, the day before the above-reference changes to the *Act* took effect. This was supported by the Two Month Notice and a type-written note from the Tenants to the Landlord submitted into evidence by the Tenants. While I accept that the Landlord's sister moved into the rental unit for a brief period, I find the Landlord did not use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The Landlord acknowledged that both his sister and nephew vacated the rental period for personal reasons. Therefore, pursuant to section 51 of the *Act*, in force on the date the Two Month Notice was served on and received by the Tenants, I find the Tenants are entitled to compensation of double the monthly rent payable under the tenancy agreement, or \$1,800.00. Having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,900.00, which is comprised of \$1,800.00 in compensation and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,900.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 2, 2019

Residential Tenancy Branch