Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenants seek compensation from their former landlords pursuant to section 51(2) (as it then was on July 18, 2017) under the *Residential Tenancy Act* (the "Act"), and compensation for the filing fee under section 72 of the Act.

The tenants applied for dispute resolution on January 15, 2019 and a dispute resolution hearing was held on May 7, 2019. The tenants and the landlords' agent attended the hearing, and the parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. There was an issue with the service of evidence by the landlords, which I shall address below.

I have reviewed and considered evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Preliminary Issue: Service of Documentary Evidence by the Landlords

At the start of the hearing I asked the landlords' agent whether and how their documentary evidence was served on the tenants. I had noted a rather late submission of evidence, in that it was received by the Residential Tenancy Branch only six days before the hearing.

The agent explained that, as best as she knew and could recall, the landlord attempted to service the tenants at their address for service, which happened to be at a shopping mall. The agent was unsure of whether the landlord dropped off the documentary

evidence and could not provide any additional information or details regarding the service. The tenants testified that they never received any evidence.
Rule 3.16 of the *Rules of Procedure,* under the Act, states that a respondent "must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure."

In this case, in the absence of any definitive proof that the landlords' evidence was served on the tenants, and considering the tenants' denial of ever receiving such evidence, I am not satisfied on a balance of probabilities that the tenants were served with the landlords' evidence as required by the Act or the *Rules of Procedure.* As such, I do not admit, and will not consider, any documentary evidence submitted by the landlords in respect of this dispute.

Issues

1. Whether the tenants are entitled to compensation under section 51(2) of the Act.

2. Whether the tenants are entitled to compensation under section 71 of the Act.

Background and Evidence

The tenants testified that the tenancy began on January of 2003 and ended on August 31, 2017. Monthly rent at the time the tenancy ended was $825.00.

On July 18, 2017, the landlords issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), a copy of which was submitted by the tenants into evidence. The Notice indicated that the tenancy, which was to end on September 30, 2017, was ending because the "rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual' spouse). The tenants subsequently gave a notice to end tenancy and vacated on August 31, 2018.

Just before December 1, 2017, the tenants discovered that the daughter of one of their former neighbours (the rental unit was half of a duplex) was to be moving into the rental unit. The landlords would not, as stated in the Notice, be moving into the rental unit. During his testimony, the tenant (L.C.) stated that he witnessed the daughter—who is not a close family member of the landlords—move into the rental unit on December 1, 2017.

The landlord's agent submitted that the landlords had every intention of moving into the rental unit. However, in late September 2017, the landlords' grandmother was diagnosed with terminal pancreatic cancer, which resulted in the landlords putting their plans (on moving in) on hold. Sadly, the grandmother passed away from the cancer on March 10, 2018.

The landlords' agent confirmed that the neighbours' daughter indeed moved into the rental unit on December 1, 2017. She further explained that, due to fears of the new government's empty home tax, that the landlords did not want the rental unit vacant.

In rebuttal, the tenants explained that when they spoke with the landlord (J.P.) on or about September 20, 2017, there was no discussion about there being an opportunity for the tenants to move back in. The tenant, while sympathetic, submitted that the death of the relative "had no bearing on our eviction whatsoever."

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 dispute, the tenants seek compensation under section 51(2) of the Act. This section of the Act, as it was in force during the time of the tenancy, reads as follows:

> 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.

Here, the landlords did not use the rental unit for the stated purpose for ending the tenancy. That is, they did not occupy the rental unit themselves or have a close family member occupy the rental unit for at least 6 months after a reasonable period after September 30, 2017. Quite the contrary: they permitted the daughter of one of their other tenants to move into and occupy the rental unit within 2 months of when the

Notice indicated the tenancy would end. And, as far as the evidence would suggest, the landlords never moved into or occupied the rental unit.

While I am sympathetic to the landlords' loss (having lost several of my family to cancer), the death of the grandmother had no tangible bearing on the reason why the Notice was issued or on why the landlords could not have moved into the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation under section 51(2) of the Act. Therefore, pursuant to sections 51(2) and section 67 of the Act, I award the tenants compensation in the amount of $1,650.00

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants are successful I grant their claim for reimbursement of the filing fee of $100.00.

Conclusion

I grant the tenants a monetary order in the amount of $1,750.00, which must be served on the landlords. The order may be enforced in the Provincial Court of British Columbia.

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

Dated: May 8, 2019

Residential Tenancy Branch