



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 15, 2019. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation under section 51 (2) of the Act and if so how much?

Background and Evidence

This tenancy started in November 2012 as a month to month tenancy. The Tenant said these Landlords took over the tenancy in August, 2018. Rent was \$1,493.00 per month for both the upper and bsmt units payable on the 1st day of each month. The Tenants paid a security deposit at the start of the tenancy and the Landlords returned the security deposit at the end of the tenancy. The Tenant said the tenancy ended on December 28, 2018 as a result of a 2 Month Notice to End Tenancy for Landlord’s Use of the Property dated October 26, 2018.

The Tenant said she received a 2 Month Notice to End Tenancy for Landlord’s Use of the Property dated October 26, 2018 in person on October 27, 2018. The Tenant said the effective vacancy date was January 1, 2019. The Tenant said the reason on the

Notice to End Tenancy was that the Landlord or a close family member was moving into the rental units.

The Tenant continued to say that after they moved out the Landlords advertised the property for rent on Craig's list. The Tenant said the upper unit was advertised at \$1,750.00/month and the bsmt unit was advertised for \$1,400.00/month. Further the Tenant said they texted the Landlord inquiring about the advertisement and if the units were for rent. The Tenant said the Landlord confirmed the units were for rent. The Tenant submitted the text messages as supporting evidence. In addition the Tenant said the Landlords did some renovations to the units and the pictures of the advertised units are their previous rental units. The Tenant said they made their application on February 7, 2019 and the Landlords took the advertisements off Craig's list after they received the Tenants' hearing package. The Tenant said the Landlords did not act in good faith as they tried to rent the units out with a large rent increase. Further the Tenant said they do not believe the Landlords are actually living in the rental unit as the Landlords own other houses that they were living in during the Tenants' tenancy. The Tenants said they are requesting compensation as indicated in the Act of 12 times the monthly rent because the Landlord's did not act in good faith and the Tenants do not believe the Landlords are actually living in the rental units. The Tenants said they are requesting $12 \times \$1,493.00 = \$17,916.00$ and to recover the filing fee of \$100.00 for this application.

The Landlords said that they have moved into the upper and basement units at the rental property as of February 1, 2019. The Landlord continued to say that he did place the advertisement on Craig's list and did respond to the text message on January 27 2019, that the units were for rent and he was showing it to potential tenants. The Landlord continued to say there are four units in the rental property and the advertisement was not for the units the Tenants were in but for two other units. The Landlord said that there were tenants in the other two units, but he thought they were moving out so he was looking for new tenants. On questioning the Landlord said the other tenants did not move out and they are still in the rental unit and have new tenancy agreements.

The Tenant said the other tenants were in the other 2 units when they moved out and they are still in the units to the best of her knowledge. The Tenant continued to say the advertisement says fully renovated and the pictures are of her previous unit not the other units with the other tenants in them.

The Landlord said that they have moved into the units and they are conducting their business affairs from the rental unit now so they have completed the reason on page two of the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord submitted Gas and Hydro invoices addressed to him at the rental unit to prove he is living in the rental unit. The Landlord's did not provide any evidence that the other rental units in the rental complex were the vacant and available for rent on February 1, 2019 as indicated in the advertisement on Craig's list.

The Landlords said in closing that the units are no longer rental units and they are living in them so they have completed the reasons on page two of the 2 Month Notice to End Tenancy for Landlord's Use of the Property as required.

The Tenant said in closing that the Landlords did not act in good faith and she believes they were evicted so that the Landlords could increase the rent as shown in the Craig list advertisements. The Tenant continued to say the text message with the Landlord about renting the units dated January 26 and 27 further prove the Landlords were not acting in good faith. The Tenant said the rent was increased from a total of \$1493.00 for both units to \$1,750.00 for the main unit and \$1,400.00 for the basement unit. Further the Tenant said the other tenants are still in the two other units so those units were never for rent as the Landlords said. The Tenant requested compensation as set out in the Act because the Landlords did not act in good faith and she believes the Landlords never intended on moving into the rental units.

Analysis

Section 49 of the Act says:

(3) 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.**

Further Policy Guideline #2 says:

C. GOOD FAITH

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or

- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, **an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.**

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy

Section 51 (2) of the Act says:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I accept the testimony and evidence of the Tenants that the Landlords were not acting in good faith when the Landlords issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated October 26, 2018. The Landlords took over the property in August 2018 and issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property on October 26, 2018. Both the Landlords and the Tenant gave testimony that the Landlord renovated the rental unit in January 2019 and the Landlord said that he advertised two rental units on Craig's list in January 2019. The Landlord said the rental units he was advertising were the two other units in the building, but the Landlord did not submit any evidence to prove this and the Landlord agreed with the Tenant's testimony that the other tenants are still in the other rental units. Further the Craig's list advertisement is for fully renovated units that the units were ready to move into February 1, 2019. It is obvious that the Landlord was advertising the rental units that the Tenants had occupied. Consequently, I find the Tenants have established ground to show the Landlord's were not acting in good faith and if the Tenants had not

made their application the Landlords, based of the balance of probabilities, would have rented the units to new tenants. It is my belief that the Landlords have appeared to move into the rental unit only to stop the Tenants action against them. I find for the Tenants and award the Tenants compensation as indicated in the section 51 of the Act the amount of 12 times the monthly rent of \$1,493.00 in the amount of \$17,916.00.

Further as the Tenants has been successful in this application, I award the Tenants \$100.00 to recover the filing fee for this application.

I grant the Tenants a monetary order for \$18,016.00.

Conclusion

A Monetary Order in the amount of \$18,016.00 has been issued to the Tenants. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) 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 *Residential Tenancy Act*.

Dated: May 07, 2019

Residential Tenancy Branch