



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction

This hearing was convened in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on February 13, 2019 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on February 13, 2019 were sent to the Landlords, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 01, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on May 01, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on October 30, 2016;
- at the end of the tenancy rent was \$881.45;
- the Landlords served the Tenant with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*;
- the Notice declared that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit;
- the Notice declared that the Tenant must vacate the rental unit by December 01, 2018; and
- the rental unit was vacated by September 30, 2018.

The Tenant stated that she does not know who was planning on moving into the rental unit.

The Agent for the Landlord stated that:

- his parents are the Landlords;
- when the Two Month Notice to End Tenancy was served he, his sister, and other family members were living together at a different address;
- when the Two Month Notice to End Tenancy was served he and his son were planning on moving into the rental unit;
- when the Two Month Notice to End Tenancy was served he did not know whether or not his sister would also be moving into the rental unit;
- on September 27, 2018 his sister started a new job in a location that was approximately a 60 to 90 minute commute from the rental unit;
- in October of 2018 his sister and decided to move out of the home they were sharing in order to be closer to her new employment;
- when his sister and a brother vacated the home they were sharing he decided not to move to the rental unit, as there was now more room in the home he had previously shared with his sister/brother;
- he preferred to stay in the home he had previously shared with his sister/brother to avoid moving his son to a new home;

- the Tenant had already vacated the rental unit by the time the Agent for the Landlord decided not to move to the rental unit;
- the Landlords renovated the rental unit after the unit was vacated;
- as the Agent for the Landlord did not move into the rental unit the Landlords decided to re-rent the unit; and
- the rental unit was advertised for rent in November of 2018.

Analysis

On the basis of the undisputed evidence I find that:

- the Tenant was paying monthly rent of \$881.45 when this tenancy ended;
- the Tenant was served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which required her to vacate the rental unit by December 01, 2018;
- the Notice declared that the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit;
- the Two Month Notice to End Tenancy was served because the Landlord's son intended to move into the rental unit;
- the Landlord's son did not move into the rental unit;
- neither the Landlords nor a close family member of the Landlords moved into the rental unit after it was vacated by the Tenant; and
- the rental unit was advertised for rent in November of 2018.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 12 times the monthly rent payable under the tenancy agreement. As I have found that the Landlord has re-rented the unit; the Landlord or a close family member of the Landlord has not taken reasonable steps to move into the rental unit; and the Landlord or a close family member of the Landlord has not occupied the rental unit for a period of at least six months, I find that the Landlords must pay the Tenant \$19,577.40, which is the equivalent of 12 times the monthly rent.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Branch Policy Guideline #50, with which I concur, outlines some reasons where it would be unreasonable and unjust for a landlord to pay compensation, which are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

Residential Tenancy Branch Policy Guideline #50 also outlines circumstances which are probably not extenuating circumstances, which are:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

In these circumstances I find that the Landlords' son opted not to move into the rental unit because he simply preferred to remain in the home he was occupying at that time. While I accept that it may have been preferable to remain in that home because some of the occupants had vacated that home and because he would not have to relocate his son, I find that those were personal choices that were not based on extenuating circumstances. I therefore find that it is not appropriate to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent.

I find that the Tenant's application has merit and that she is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$10,677.40, which is comprised of \$10,577.40 in compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$10,677.40. In the event that the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

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 29, 2019

Residential Tenancy Branch