



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing originally convened on March 18, 2019 and was re-convened due to evidentiary issues. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord, his realtor and the tenant 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 her application for dispute resolution via registered mail but could not recall on what date. The landlord confirmed receipt of the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified to the following facts. This tenancy began in August of 2014 and ended on September 1, 2018. Monthly rent in the amount of \$875.00 was payable on the first day of each month. The subject rental property is a house with a basement suite (the "subject rental house"). The tenant rented the basement suite (the "subject rental property").

The landlord testified that he purchased the subject rental house and took possession of it on October 1, 2018. The landlord entered into evidence a contract of purchase and sale which states that the sale of the subject rental house completed on September 27, 2018 and the landlord took possession on October 1, 2018.

The contract of purchase and sale states in part:

The Seller will give legal notice to the Tenant to vacate the premise, but only if the Seller receives the appropriate written request from the Buyer to give such notice in accordance with the requirements of section 49 of the Residential Tenancy Act.

The Buyer will have vacant possession of the property at 12 PM on October 1, 2018.

The landlord entered into evidence a document titled "Tenant Occupied Property-Buyers Notice to Seller for Vacant Possession" which states:

I/we or my spouse, my/our child/children, my/our parent(s) intend in good faith to occupy the residential premises I/we am/are purchasing under the Contract of Purchase and Sale dated [landlord].

All subjects have been removed, and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 PM September 30, 2018.

This request is in accordance with Sections 49 and 37 of the Residential Tenancy Act of the Province of British Columbia.

The above document contains an e-signature of the landlord. The landlord testified that the e-signature on the document is his.

The landlord's realtor testified that he prepared the "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" on behalf of the landlord and served it on the seller.

The tenant testified that on July 31, 2018 the original owner of the subject rental house (the seller) personally served her with a Two Month Notice to End Tenancy for Landlord's Use with an effective date of October 1, 2018 (the "Two Month Notice"). The Two Month Notice was entered into evidence.

The Two Month Notice states the following reason for ending this tenancy:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord testified to the following facts. The landlord requested vacant possession of the subject rental property because he thought that it was standard practice when purchasing a new home.

The landlord testified that he rented the basement suite to new tenants in November of 2018.

The tenant testified that in November of 2018 she stumbled upon an online advertisement for the subject rental property. The rental advertisement was entered into evidence.

The landlord testified that he is new to the country and was not aware that he was not permitted to rent the subject rental property after requesting vacant possession of the subject rental property.

Analysis

Section 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* states that 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 find that the landlord (the buyer) asked the seller, in writing, to give notice to end the tenancy on the ground that he or his close family member intended in good faith to occupy the rental unit.

I find that the landlord did not use the rental unit for the stated purpose for at least 6 months' as he testified that he rented the subject rental property to new tenants in November of 2018. Pursuant to section 51(2) of the *Act*, I find that the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. In this case, I find that the tenant is entitled to receive \$10,500.00 from the landlord.

I note that ignorance of the law does not relieve a party of its consequences.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$10,500.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: May 13, 2019

Residential Tenancy Branch