



Dispute Resolution Services

Page: 1

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 February 19, 2019 (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 represented at the hearing by M.H. The Landlord attended the hearing on her own behalf. Both M.H. and the Landlord provided affirmed testimony.

On behalf of the Tenants, M.H. testified the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. In addition, the Landlord testified the Tenants were served with a documentary evidence package by registered mail. M.H. acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties present were provided with an opportunity to present their 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

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

Background and Evidence

The parties agreed the tenancy began on September 1, 2017, and ended when the Tenants vacated the rental unit on June 30, 2018. During the tenancy, rent in the amount of \$5,000.00 per month was due on the first day of each month. The parties confirmed there are no outstanding issues relating to any deposits paid by the Tenants.

The Tenants seek compensation under section 51 of the *Act*. They claim they were issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 4, 2018 (the "Two Month Notice"). The parties agreed the Two Month Notice was served on and received by the Tenants on May 6, 2018.

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, the Tenants were advised by the Landlord that her husband would be moving in so he could visit his children. However, according to M.H., the Landlord's husband did not move into the rental unit. Rather, the Landlord's former tenants moved into the rental unit.

In support of their claim, the Tenants submitted a letter from a former neighbor, S.B., dated February 13, 2019. The letter states:

It was apparent that owner's ex-husband did not move in, but their previous tenants became the residents. I am not sure of the exact date of their occupancy, however, they were definitely moved in and residing there in early August 2018...

[Reproduced as written.]

In addition, the Tenants submitted an email from the Landlord, dated February 28, 2019. It confirms receipt of the Tenants' dispute resolution package. The email also confirms that the Landlord's husband was expected to "take the property in the divorce" but later decided that "he could not justify owning a property...that would sit empty the majority of the year".

In reply, the Landlord testified that her divorce was not finalized in January 2019. She acknowledged that her husband did not move into the rental unit, and that former tenants moved into the rental unit in August 2018. Although the Two Month Notice clearly indicates an effective date of June 30, 2018, the Landlord testified that the Tenants chose a move-out date that was convenient for them and which coincided with a school calendar.

The Landlord's testimony was also reflected in written submissions which stated that her husband intended to use the rental unit when he came to visit his children, but that they later decided it would not make sense to hold the property for use only a few weeks each year.

Further, the Landlord submitted a letter written by her ex-husband, T.H., dated March 31, 2019. It confirmed that although he initially intended to use the property when he visited his children, it was no longer financially viable to leave the property vacant for much of the year after the family assets were divided as part of divorce proceedings.

Analysis

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

Section 51(2) of the *Act*, in effect on May 6, 2018, when the Two Month Notice was served on and received by the Tenants, confirms that if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, I find there is sufficient evidence before me to find that the rental unit was not used for the stated purpose for at least 6 months beginning within a reasonable

period after the effective date of the notice. Indeed, the Landlord's own testimony acknowledged that her husband did not occupy the rental unit as intended, and that the property was re-rented to former tenants less than 2 months after the Tenants moved out. The Landlord's testimony suggesting that her husband's decision not to occupy the rental unit was made at the last-minute decision, the Tenants' entitlement to compensation remains unchanged.

Pursuant to sections 51 and 67 of the *Act*, I find the Tenants have demonstrated an entitlement to a monetary order in the amount of \$10,100.00, which is comprised of \$10,000.00 in compensation (\$5,000.00 x 2) and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$10,100.00. 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: June 7, 2019

Residential Tenancy Branch