



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. The tenant stated that the submitted documentary evidence was served as part of the notice of hearing package Canada Post Registered Mail. The landlord disputes this stating that only 2 photographs of text message(s) and 1 email (a screen shot) were received. The tenant stated that she had her husband as a witness who saw her mail it together. Both parties confirmed that the landlord served the tenant with her submitted documentary evidence via Xpress Post on August 6, 2019.

In this case, I accept the undisputed evidence of both parties that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties are deemed served as per section 90 of the Act. On the photographic evidence disputed by the landlord, the tenant has argued that the package was served as claimed and relies on her direct testimony that her husband was a witness to this service. On this issue, credibility is paramount and I accept the evidence of both parties in this regard. However, the tenant's direct testimony stating that her husband was a witness can be considered "self-serving" and as such requires a greater scrutiny. The burden of proof lies with the tenant who claims that service was properly made. Unfortunately, in this case, I find that the tenant has failed to provide sufficient evidence that the disputed

evidence was indeed served. As such, the submitted documentary evidence termed as "Evidence" (photographs of the landlord showing the rental unit to be excluded from consideration. The hearing shall proceed without any further references to these documents. Both parties were notified that the tenant may make references to the contents of the evidence, but if necessary a finding on the credibility of any disputed evidence would need to be made.

At the outset, the tenant also clarified that her monetary claim for \$18,500.00 was based upon information given to her when she filed the application for dispute. The tenant seeks 12 months of rent @ \$1,500.00 (totalling, \$18,000.00) and \$500.00 for compensation for moving and grievances as she is pregnant. The tenant's request for compensation of \$500.00 was dismissed as the Act does not provide for compensation other than in section 51 as claimed in the first part of the tenant's application. Both parties confirmed their understanding and the hearing proceeded on this basis.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2018 on a fixed term tenancy ending on March 31, 2019 as per the submitted copy of the signed tenancy agreement dated September 27, 2018. The monthly rent was \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid.

The tenant seeks a monetary claim of \$18,000.00 which consists of:

$$\text{\$1,500.00} \quad \times 12 \text{ months} = \text{\$18,000.00}$$

Both parties confirmed that the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use (the 2 month notice) pursuant to section 49 of the Act. The 2 month notice dated January 31, 2019 provides for an effective end of tenancy date of March 31, 2019 and the reason selected as:

*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's spouse).*

The tenant stated that she complied with the notice and the tenancy ended on March 31, 2019. The tenant claims that the landlord's family did not move-in and that she advertised the unit for rent and it was subsequently re-rented to a tenant. The tenant seeks compensation as claimed above as the landlord has failed to comply with the Act pursuant to section 51.

The landlord confirmed that the 2 month notice dated January 31, 2019 was issued and served to the tenant. The landlord stated that the unit was to be occupied by her "boyfriend's daughter, tara". The landlord stated that it was her intention to have tara occupy the rental unit as her landlord had given notice to end tenancy for sale of the rental property. The landlord stated that she was still under this impression until early April 2019 when she was forced to advertise the unit to be re-rented on April 14, 2019. The landlord stated that in early April she was informed by tara that she had decided to stay at her current rental. The landlord clarified that tara had originally been given notice to end tenancy for sale of the rental unit, then later the landlord rescinded the notice and tara decided to stay. The landlord provided a copy of a statement dated July 24, 2019.

The landlord later argued that she is in a common-law relationship with her boyfriend living together for the last 8 years and that his daughter is considered her "step-daughter" which she considers family.

The landlord has submitted in support of her claims copies of:

- A typed letter dated July 24, 2019 from her stepdaughter

- A copy of a signed tenancy agreement by the stepdaughter for April 1, 2019 dated March 5, 2019

- A copy of text message exchange(s) between the stepdaughter and her landlord dated February 11, 2019

- A copy of text message from landlord notifying the stepdaughter to unlist the property for sale dated April 24, 2019

- A copy on an online advertisement to rent the unit dated April 14, 2019

- A copy of the signed tenancy agreement between the landlord and tenant dated September 27, 2018

Analysis

The tenants raised Section 51(2) (b) in their submissions. This section sets out that where a rental unit is not used for the stated purpose for a period of at least six months the landlord must pay the tenant an amount the equivalent to 12 times the monthly rent payable under the tenancy.

In this case, the tenant claims that as per the reason selected on the 2 month notice dated January 31, 2019 for landlord's use. The landlord failed to have "a close family member" occupy the rental unit and rented it out to a different family. The landlord confirmed this claim, but stated that it was always her intention in "good faith" to have her step-daughter occupy the rental unit. The landlord provided undisputed testimony that it was only upon learning from her step-daughter in early April 2019 that she would not have to vacate her current tenancy and move into the landlord's unit for April 1, 2019 that the landlord advertised the unit for rent on April 14, 2019 for May 1, 2019. The landlord stated that because of her step-daughter, she has lost one months' rent as compensation to the tenant for complying with the notice and loss of rent for one month (April 2019).

Residential Tenancy Branch Guideline, 2A, Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states in part,

*C. OCCUPYING THE RENTAL UNIT Section 49 gives reasons for which a landlord can end a tenancy. **This includes an intent to occupy the rental unit or to use it for a non-residential purpose** (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). **Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose."** (See for example: *Schuld v Niu*, 2019 BCSC 949) **The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.***

In reviewing the landlord's direct testimony and comparing it with the submitted documentary evidence, I find some discrepancies. The landlord provided direct testimony that her "step-daughter" would occupy the rental unit, but the landlord submitted a copy of a signed tenancy agreement dated March 5, 2019 to begin a tenancy on April 1, 2019 with same named "stepdaughter". I find that this is inconsistent with the intent of the 2 month notice. The landlord essentially was trying to

re-rent the rental property to her “step-daughter” as shown in the signed and dated tenancy agreement. I also refer to the statement dated July 24, 2019 by the “step-daughter which states in part, “A. generously said that we could move into her place and would offer us a lower rent.” This statement confirms that the landlord attempted to re-rent the unit which was not the stated purpose of the 2 month notice and when that failed advertised the unit for rent again.

On this basis, I find that the landlord was not intending in good faith to occupy the rental unit. The tenant’s monetary order application is granted for \$18,000.00.

Conclusion

The tenant is granted a monetary order for \$18,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: August 16, 2019

Residential Tenancy Branch