



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants Application for Dispute Resolution, filed on October 29, 2019, in which the Tenants sought monetary compensation from the Landlord in the amount of \$19,200.00 pursuant to sections 51(2) and 67 of the *Residential Tenancy Act* and recovery of the \$100.00 filing fee.

The hearing of the Tenants' Application was scheduled for 1:30 p.m. on March 10, 2020. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:55 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenants' hearing package. The Tenant, S.R., testified that they served the Landlord with the Notice of Hearing and the Application on November 7, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of November 12, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenants and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2)?
2. Should the Tenants recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began April 1, 2016. Monthly rent was \$1,600.00.

The Landlord issued the 2 Month Notice to End Tenancy for Landlord's Use on April 7, 2019. The Tenants confirmed that the Notice was served on the door on that date. The reasons cited on the Notice were that the Landlord, or the Landlord's close family member, would be occupying the rental unit. The effective date of the Notice was June 30, 2019.

The Tenant confirmed that the rent was \$1,600.00 at the time the tenancy ended. The Tenant also testified that they accepted the Notice and moved out of the rental property on June 30, 2019.

The Tenant claimed that on April 7, 2019, the Landlord told her that his mother was going to move into the rental unit. She stated that after they moved out, the Landlord rented the unit to others. She based this on information she says she received from the neighbour and one of their friends. The Tenant stated that the previous neighbour, B., told the Tenants that the people who moved in were not related to the Landlord. The Tenant stated that B. called them and told them this as she was "on the lookout for that".

The Tenant further testified that one of their friends, L.M., also attended the rental unit on November 24, 2019 and confirmed that the new occupants, a man in his 40's by the name of H. and his family, were renting the rental unit and were not related to the Landlord. The Tenant confirmed that she received a text message from L.M. confirming his conversation with H. on November 24, 2019.

The Tenants' friend, L.M. also called into the hearing and gave affirmed testimony. He testified that he went to the rental unit in late November 2019. He further testified that he went to the home, knocked on the door, and spoke to the person who answered the door and this person confirmed he resided in the rental unit with his family for approximately three months. L.M. stated that this person was in his early 40's and identified himself as H. H. also informed L.M. that he lived there with his wife and two young boys.

L.M. stated that to his knowledge the Landlord ended the tenancy for his mother to reside in the rental unit.

Analysis

The Tenants seek monetary compensation pursuant to section 51(2) of the *Act* which reads as follows:

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.

Based on the above, the Tenants undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Landlord issued the 2 Month Notice to End Tenancy on April 7, 2019. The reasons cited on the Notice were that "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).

I accept the Tenants' evidence that within six months of the effective date of the Notice, the Landlord rented the rental unit to a third party: H. and his family. Although the Landlord did not attend the hearing to dispute the Tenants' claims, I am persuaded by the Tenants' testimony as well as that of their witness, L.M., that H., a man who appeared to be in his 40's, would not meet the definition of "close family member" even in the event he was related to the Landlord

As the property was rented during the six-month period after the effective date of the Notice and not occupied by the Landlord or the Landlords' close family member, I find the property was not used for the stated purpose on the Notice as required by the *Act*.

I therefore find, pursuant to section 51(2) of the *Act*, that the Tenants are entitled to monetary compensation equivalent to 12 months of the monthly rent payable under the tenancy agreement. The legislation does not provide any flexibility on this issue.

I find that the monthly rent was \$1,600.00. As such, the Tenants are entitled to the sum of **\$19,300.00** representing 12 months of rent at \$1,600.00 per month and recovery of the \$100.00 filing fee.

Conclusion

The Tenants' application for monetary compensation pursuant to section 51(2) is granted. As the Tenants have been successful in their Application, they are also entitled to recover the filing fee.

Pursuant to section 67 of the *Act*, the Tenants are entitled to a Monetary Order in the amount of **\$19,300.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: March 11, 2020

Residential Tenancy Branch