



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL

Introduction

In this dispute, the tenants sought compensation against their former landlord, pursuant to section 51(2) (as it was on September 30, 2017) and section 67 of the *Residential Tenancy Act* (the “Act”).

The tenants applied for dispute resolution on February 14, 2020, and a dispute resolution hearing was held on April 3, 2020. The tenants and the landlord attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties served evidence late, but they both confirmed they had an opportunity to review the evidence before the hearing.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issue of this application.

Issue

Are the tenants entitled to compensation?

Background and Evidence

The tenants testified that the tenancy began in May of 2014. Monthly rent at the end of the tenancy was \$1,203.00. On September 30, 2017, the landlord served a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) in-person on the tenants. The Notice, a copy of which was submitted into evidence, indicated that the tenancy was ending because “The rental unit will be occupied by the landlord or the landlord’s close family member.”

The tenants disputed the Notice at arbitration but were unsuccessful. On February 15, 2018 the tenants moved out of the rental unit and on February 25, 2018 they dropped off the keys to the landlord.

Returning to the rental unit (a house) several times a month “to see what was going on,” the tenants testified that it did not appear that the landlord was living in the house. “The windows were all boarded up,” they explained. The doorway was also boarded up. Photographs of the boarded-up house were submitted into evidence.

But the boards were all removed when new tenants took possession of the house in September 2018. Photographs of the new tenants and their moving truck were submitted into evidence. Finally, the tenants submitted that the house was being renovated between April and August 2018. “It was renovated and re-rented,” they submitted.

The landlord did not disagree with much of the tenants’ submissions, but explained that due to business zoning issues, he was unable to use his other home for business purposes. That said, he testified that when he issued the Notice he was “under the assumption that I was going to move in.” But things with his business did not go well, and he was unable to move into the house. He boarded up the property and had to do extensive renovations throughout April to August 2020. And, he testified that there was “nobody living in the house” during that time period. He explained that he “felt [he] did the paperwork correctly” and issued the Notice in good faith.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As I explained to the parties during the hearing, the law that I must apply is that which existed on the date that the Notice was issued, namely September 30, 2017. Section 51(2) of the Act, as it was at the time, reads as follows:

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been 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

(b) 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this dispute, the landlord issued the Notice on the basis that the rental unit would be occupied by him or a close family member. The effective date of the tenancy ending on the Notice is November 30, 2017. However, this effective date was extended to February 15, 2018, at which point the tenants vacated the rental unit. (I note that the tenants applied for dispute resolution on February 14, 2020, one day before the two-year limitation period expired.)

Within a few weeks of the tenants vacating the rental unit, instead of moving into, or occupying, the rental unit, the landlord began to board up the windows and renovate the property. The word “occupy” or “occupied” does not, I find, encompass the activity of renovating a rental unit. (Indeed, the prevalence of these so-called “renovictions” is such that the Legislature chose to increase compensation to twelve months rent equivalent on May 17, 2018.)

Finally, as the landlord stated during his testimony, nobody was actually living in the rental unit between the date the tenants moved out and new tenants moved in, in September 2018.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim that steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 (that is, for landlord or landlord’s close family occupation) within a reasonable period after the effective date of the notice.

Having found that the landlord breached section 51 of the Act, the tenants are entitled to compensation in the amount of double the amount of the monthly rent, or \$2,406.00. I make this order pursuant to section 67 of the Act.

Conclusion

I grant the tenants a monetary order in the amount of \$2,406.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: April 3, 2020

Residential Tenancy Branch