



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 27, 2020 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss and to recover the filing fee, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing on his own behalf. The Landlords attended the hearing and were represented by P.L., legal counsel. The Landlords were also accompanied by S.C., a witness. The Tenant, Landlords, and S.C. provided a solemn affirmation.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail on April 1, 2020. The Landlords acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. 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 Landlords submitted documentary evidence in response to the Application. On behalf of the Landlords, P.L. submitted it was served on the Tenant by email on July 10, 2020. The Tenant denied receipt of the Landlords' evidence and the Landlords did not refer to any documentary in support of service in this manner. As there is insufficient evidence before me to confirm service in this manner, I find the Landlords' documentary evidence is excluded from consideration. P.L. advised the Landlords were prepared to proceed based on their oral testimony.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

The Tenant testified that he rented the property from the previous owner who was the seller of the property. The Landlords are the purchasers of the property. The Tenant testified the tenancy began on October 1, 2014 and ended on February 15, 2020. During the tenancy, rent was due in the amount of \$1,100.00 per month. The Landlords did not dispute the Tenant's description of the tenancy.

The Tenant claimed \$13,200.00 as compensation under section 51(2) of the *Act*. The Tenant testified the tenancy ended pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 30, 2019 which had an effective date of March 31, 2020 (the "Two Month Notice"). A copy of the Two Month Notice was submitted into evidence. The Two Month Notice was issued on the basis that all the conditions for the sale of the rental property were met and the purchaser asked the seller to issue a notice to end tenancy because the purchaser or a close family member intended in good faith to occupy the rental property. However, the Tenant asserted that the rental property was not occupied by the Landlords or a close family member but was demolished and that a new home is being built. Two photographs depicting a demolished house and the street address on a mailbox were submitted into evidence. The Tenant suggested he was given the incorrect notice to end tenancy and that it appears the Landlords merely wanted an earlier vacancy date so they could begin construction earlier.

In reply, the Landlords acknowledged they have not moved into the rental property. They testified that they purchased the property without viewing the interior. After they took possession on January 16, 2020, they learned of a rodent infestation they suggested was caused by the Tenant and that the house contained asbestos. As a result, the Landlords decided to demolish the existing structure and build a new home. The Landlords testified that currently live in a rented “tiny home” located across the street from the property where construction of their new home is currently underway. The Landlords testified they and their children hope to move into their new home in December 2020.

P.L. also made submissions on behalf of the Landlords based on “fairness”. He suggested that the Tenant was already compensated when the Landlord returned rent paid for January 1-31, 2020 and by not charging rent from February 1-15, 2020. P.L. also suggested the Tenant ended the tenancy by providing the Landlords with his own written notice to end the tenancy.

Analysis

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

Section 49 of the *Act* allows a landlord to end a tenancy if all the conditions for the sale of the property have been met and the purchaser asks the seller to issue a notice to end tenancy because the purchaser or a close family member intended in good faith to occupy the property for a residential purpose.

Section 51(2) of the *Act* provides for compensation for tenants who vacate a rental property in accordance with a notice to end tenancy issued under section 49 of the *Act* when the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental property 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.

In this case, I find the Landlords did not take steps to accomplish the stated purpose for ending the tenancy and that the rental property was not used for the stated purpose. This was not disputed by the Landlords. I also find it difficult to accept that the Landlords intended to move into the rental property without having viewed the interior, particularly considering the Landlords intended to move in with their children.

Section 51(3) of the *Act* empowers the director to excuse a landlord from the obligation to pay compensation if there are “extenuating circumstances” that stopped the landlord from accomplishing the purpose. Policy Guideline #50 confirms that extenuating circumstances arise when it would be unreasonable and unjust for a landlord to pay compensation. In this case, I find there are no extenuating circumstances that would excuse the Landlords from their obligation to pay compensation under section 51(2) of the *Act*. I do not accept that the discovery of a rodent infestation or asbestos in the rental property are extenuating circumstances. The Landlords could have insisted on viewing the interior or hired an inspector to do the same.

With respect to the submissions of P.L. I find there is insufficient evidence before me to conclude that the compensation that was alleged to have been paid to the Tenant represented a full and final settlement of the issue before me now. Indeed, it may have been compensation to which the Tenant was otherwise entitled under section 51(1) of the *Act*. Further, I find there is insufficient evidence before me to find that the Tenant’s written notice to end the tenancy early negated the effect of the Two Month Notice. A tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to end the tenancy early under section 50 of the *Act*. The Landlords initiated the end of the tenancy by asking the seller to issue the Two Month Notice on their behalf, not the Tenant.

Considering the above, I find the Tenant is entitled to a monetary order in the amount of \$13,300.00 which is comprised of \$13,200.00 in compensation (\$1,100.00 x 12 months) and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$13,300.00. The order must be served on the Landlord. 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: July 28, 2020

Residential Tenancy Branch