



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On May 19, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Respondent and his son (who spoke for the Respondent) and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the Tenants receive a Monetary Order for compensation, in accordance with Section 51(2) of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 1, 2015 and continued as a month-to-month tenancy. The rent was \$1,530.00 and due on the first of each month. The

original landlord collected and subsequently returned a security deposit in the amount of \$745.00.

The parties agreed to the following facts:

The Tenants received a Two Month Notice to End Tenancy on November 29, 2019, with an effective date of February 27, 2020, for the reasons the original landlord stated as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the (original) landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenants moved out of the rental unit on January 15, 2020.

The Tenants have claimed that the purchaser of the residential property (the "Respondent") breached section 51(2) of the Act by failing to occupy the rental unit within a reasonable period after the effective date of the notice.

The Tenants provided the following testimony and evidence to support their claim:

- examples of the rental unit being advertised for rent on several electronic platforms; these ads were placed in late February of 2020
- interior pictures of the "for rent" rental unit that showed the Tenants' furniture in them
- Ads that included information that there would be an Open House as of March 1, 2020.

The Tenants submitted that the Respondent never intended to move into the rental unit. The Tenant stated that the ads were posted at the end of February 2020; the same time the Respondent took legal possession of the residential property.

The Tenants testified that they returned to the rental unit to pick up some mail and found the Respondent renovating the rental. The Tenants suggested that the Respondent was creating two rental units out of the rental unit.

The Tenants submitted that the Respondent failed to occupy the rental unit within a reasonable time and are claiming the equivalent of 12 months rent, in the amount of \$18,360.00.

The Respondent testified that he took possession of the residential property on March 1, 2020 and had intended to move into the rental unit when the agreement to purchase was completed in November 2019.

The Respondent acknowledged that by the end of February 2020, they had changed their mind about moving into the rental unit and did subsequently advertise the unit for rent on various electronic platforms.

The Respondent stated that there was full intention to move into the rental unit and that there still is an intention to move into the rental unit; however, due to the extenuating circumstances of COVID-19 and the risk it posed to the elderly Respondent, the move was delayed. The Respondent stated that by mid-February 2020, as a result of the increasing worldwide reports of the spread of COVID-19, the Respondent did not feel comfortable moving from a home they had spent the last 30 years, and into a new home that may increase the risk to their health.

The Respondent stated that the rental unit was not rented to new tenants until June 1, 2020. The Respondent claimed that the exigent circumstances of a worldwide pandemic prevented the Respondent from occupying the rental unit.

Analysis

Section 51 of the Act directs the purchaser, who asked the landlord to give the notice to end the tenancy under Section 49 of the Act, to pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the Tenancy Agreement if 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.

In this case, I accept the testimony of both parties and find that the Respondent failed to accomplish the stated purpose for ending the tenancy; that being, occupying the rental unit within a reasonable amount of time.

Before considering the Tenants' compensation for the above breach by the Respondent, I have to consider section 51(3) of the Act which states that an arbitrator may excuse the purchaser if, in the arbitrator's opinion, extenuating circumstances prevented the purchaser from accomplishing the stated purpose for ending the tenancy.

In this regard, I accept the Tenants' undisputed testimony that the Respondent began to advertise the rental unit as soon as, if not before, the Respondent took possession of the residential property. I also accept that these actions of the Respondent could appear to indicate that the Respondent had acted in bad faith and had never intended to move into the rental unit.

When considering the testimony of the Respondent and the lack of supporting evidence, I find the Respondent did not provide compelling evidence to support their claim about the initial intentions to move into the rental unit and the details surrounding the timelines of when the purchaser decided not to move into the rental unit. However, I do accept the Respondent's testimony that the effects of COVID-19 are significant and may have posed a health risk to the elderly purchaser of the rental unit.

Upon review of all the testimony and evidence in this case, I find that the Respondent has established extenuating circumstances that prevented the Respondent from moving

into the rental unit; specifically, that COVID-19 and the health risk it presents to the elderly, interfered with the Respondent's intended move into the rental unit. As such, I dismiss the Tenants' claim for compensation pursuant to section 51(2) of the Act.

Although I have dismissed the Tenants' claim, I find that the Tenants' Application has merit and that the Tenants are entitled to recover the cost of the filing fee for this Application for Dispute Resolution.

Conclusion

I grant the Tenants a Monetary Order for the amount of \$100.00, in accordance with section 72 of the Act. In the event that the Respondent does not comply with this Order, it may be served on the Respondent, filed with the Province of British Columbia Small Claims 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: September 23, 2020

Residential Tenancy Branch