



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 Tenants' Application for Dispute Resolution. The participatory hearing was held on November 23, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Landlord was represented at the hearing by an agent. Both Tenants also attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's evidence. However, as discussed during the hearing, the photos uploaded by the Tenants, 3 days before the hearing, were not served to the Landlord in accordance with the Rules of Procedure, and are not admissible. It appears these photos were available well in advance of the hearing but were not provided until the last minute. The Tenant has to ensure the Landlord received these photos no later than 14 days before the hearing.

All parties were provided the 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

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenants stated that monthly rent was \$2,100.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on January 12, 2019. The Tenant provided a copy of the Notice into evidence, and it indicates the Landlord was seeking to end the tenancy based on the following ground:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the 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 Landlord's agent explained that the Notice was issued by the Landlord/owner so that they could move into the property. The Landlord's agent stated that they should have selected the following ground:

- 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 Tenants understood that the Landlord's intended to move in, as this is what had been discussed.

The Tenants stated that they moved out on or around April 8, 2019. The Tenants stated that they were aware, prior to moving out, that the Landlord (who purchased the house in the fall of 2018) was from overseas. The Tenants stated that they suspected the Landlord was not planning on moving in, given that they were in China, so they kept an eye on the house to watch for activity. The Tenants stated that they went by the house on May 2, 2019, and saw that the house appeared empty, there was till garbage left behind from when they left, and there was no sign of anyone having moved in. The Tenants stated that they spoke with neighbours at that time who confirmed that no one had moved in as of May 2, 2019.

The Tenants stated that they came back every 2 weeks to check if they got any mail, and there was no sign of any activity. The Tenants stated that they saw a Craigslist post on August 14, 2019, to advertise the house for rent. The Tenants stated that it appears the Landlord did some renovations in August 2019, 4 months after they left, and then the unit was re-rented.

The Landlord's agent stated that the Landlord lives in China, and bought this house on November 30, 2018. The Landlord's agent stated that the Landlord intended to move to BC, and live in this house so that their children could go to school here. The Landlord's agent stated that after the Tenants left, the Landlord realized lots of work was needed to fix the house up. The Landlord's agent noted that it took the Landlord a while to figure out what to do with the property, and the repairs, and ultimately, the Landlord decided they wanted to fix the property, and re-rent it, rather than move in. The Landlord's agent stated that the Landlord found new renters as of October 1, 2019. The Landlord never moved in.

The Landlord's agent pointed out two sets of photos that were taken. The first set was from the house inspection in the fall of 2018, prior to when the Landlord took possession. The Landlord's agent used these photos to highlight the repairs that were required, including the deck, the yard, an interior door, and some wiring. The Landlord's agent also submitted some photos that were taken after the Tenants moved out, sometime in April 2019. There were also some videos showing the condition of the deck (some rotting), and other items that needed fixing.

The Landlord provided an invoice showing that repairs were done prior to the unit being re-rented in the fall of 2019. This invoice was dated August 20, 2019. The Landlord's agent stated that the Landlord was unable to get the repairs to the house done in time for their kids to enroll in school for the fall of 2019, so they decided to stay in China rather than move in.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$2,100.00) because the Landlord did not move in, as they stated they were going to.

First, I note the following portion of the Act:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

In this case, I find it is reasonable to amend the Notice to reflect the ground the Landlord intended to select. The Tenants knew which grounds the Landlord intended to select, and it appears the Landlord made a clerical error. I hereby amend the Notice, issued, January 12, 2019, to include the following ground:

- 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 turn to the following portion of the Act:

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.*

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I note the Landlord's agent presented some reasons as to why the Landlord never moved into the rental unit. However, in this case, it is undisputed that the Landlord never moved in, as they indicated they would on the Notice. I find this was a breach of section 51(2)(b).

Further, I find the Landlord also breached section 51(2)(a), as I am not satisfied that they took sufficient steps, within a reasonable period of time after the effective date of the Notice to accomplish the stated purpose on the Notice. Although it may be reasonable to do some renovations prior to moving in, I do not find it is reasonable to wait 4 months to begin repairs that likely could and should have been actioned sooner, if in fact the Landlord had time sensitive intentions to move in for the following school year. I note the Landlord was in possession of a house inspection, and photos from the fall of 2018. It appears the deck decay, and other issues likely were known, or ought to be known, when that inspection was done on behalf of the Landlord. I would expect the Landlord could have, with reasonable planning and preparation, have scheduled some of the maintenance/repairs closer to the date the Tenants moved out. It is unclear why it took 4-5 months to complete repairs, given they were not large in scope.

Further, ***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy*** states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

I have considered the totality of the evidence and testimony, and I find there is insufficient evidence to show that there were "extenuating circumstances" or that there

were exceptional circumstances such that the Landlord ought to be excused from paying the compensation due. I do not find there is sufficient evidence to show that any of the renovations, or logistics associated with foreign ownership were significant or severe enough such that the Landlord ought to be excused from the requirements under section 51 of the Act. I award the Tenants' claim, in full.

As the Tenants were successful with their application, I grant the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenants a monetary order in the amount of \$25,300.00 because the Landlord breached section 51 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$25,300.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: November 23, 2020

Residential Tenancy Branch