



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under sections 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The respondent was represented by agent JR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant affirmed he served the notice of hearing and evidence by registered mail sent in October 2020. A second evidence package was served by registered mail on February 01, 2021. The respondent confirmed receipt of both packages but he did not have time to review the documents received on February 01, 2021.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**

(emphasis added)

I accept the tenants served the notice of hearing and evidence package mailed in October 2020 in accordance with section 89 of the Act. Per Rule of Procedure 3.14, the second evidence package, served less than 14 days before the hearing, is excluded.

Preliminary Issue – Jurisdiction

The tenants' application is for a monetary compensation in the amount of \$35,000.00. The tenants also applied for an authorization to recover the filing fee. Thus, the total amount of the tenants' application is \$35,100.00.

Residential Tenancy Branch Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.
[...]

If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration.

After carefully reviewing the Act, I find the application for \$35,100.00 can proceed, as the tenant applied for a compensation under section 51(2) of the Act.

Preliminary Issue – Named Respondent

The respondent stated he was an agent for the landlord until August 31, 2020 and the landlord is the numbered company handwritten in the tenancy agreement after the respondent's printed name. The respondent affirmed he should not be named respondent in this application.

The tenants testified the tenancy agreement names the respondent as the landlord and they do not know the landlord's address for service. A copy of the tenancy agreement was submitted into evidence. It states:

AGREEMENT between:

(date)

[Respondent] + [numbered company]

(Respondent in this Agreement referred to as "Landlord")

and

Tenants CM and CE

Section 01 of the Act defines landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,**
 - (i) permits occupation of the rental unit under a tenancy agreement, or**
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);**
- (c) a person, other than a tenant occupying the rental unit, who**
 - (i) is entitled to possession of the rental unit, and**
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;**

(emphasis added)

Based on the tenancy agreement and the respondent's testimony, per section 1 of the Act, the respondent acted as the landlord during the tenancy and can be named respondent in this application.

Issues to be Decided

Are the tenants entitled to:

01. a monetary order for compensation under section 51(2) of the Act?
02. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in May 2019 and ended on September 01, 2020. Monthly rent in the amount of \$1,950.00 was due on the first day of the month. The landlord collected a security deposit in the amount of \$975.00 and returned it.

Both parties agreed the tenants received a two-month notice to end tenancy (the Notice) dated July 03, 2020 in early July 2020. A copy of the Notice was submitted into evidence. The Notice indicates the landlord is the respondent and it was signed by agent JR. It states:

Reasons for this Two Month Notice to End Tenancy (check the box that applies)

- The rental unit will be occupied by the child of the landlord or the landlord's spouse.

The effective date of the Notice was September 30, 2020.

The tenants affirmed they moved out one month before the effective date and only moved out because of the Notice.

The tenants stated the landlord or his child did not move to the rental unit. On October 13, 2020 the tenants drove by the rental unit and saw a realtor's lock on the front door. The tenants drove by the rental unit again in the first week of November 2020 and noticed the windows coverings were opened and there was no furniture in the rental unit. The tenants testified the rental unit was sold on November 21, 2020.

The respondent said the owner advised him he planned to live in the rental unit. The respondent is not aware what happened to the rental unit after August 31, 2020.

Analysis

Section 49(3) of the Act states the landlord may end a tenancy if the landlord or his family intends to occupy the rental unit:

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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 undisputed testimony and the Notice, I find the Notice was served by the respondent, acting as the owner's agent, with the intent of the landlord or his family occupying the rental unit.

The tenants' testimony was convincing, trustworthy and straightforward. The respondent did not dispute the tenants' testimony about the landlord not occupying the rental unit after the Notice's effective date of September 30, 2020 and selling it on November 21, 2020.

The respondent, acting as the owner's agent during the tenancy, served the Notice during the tenancy.

I find, on a balance of probabilities, the landlord did not comply with section 49(3) of the Act by not occupying the rental unit after September 30, 2020.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$23,400.00 (12 x \$1,950.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of \$100.00.

In summary, the tenants are entitled to a monetary award in the amount of \$23,500.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$23,500.00.

The tenants are provided with this order in the above terms and the respondent must be served with this order. Should the respondent fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: February 24, 2021