



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the respondents pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The respondents confirmed receipt of the tenant's application and evidence. Based on the testimonies I find the respondents duly served with the tenants' materials in accordance with sections 88 and 89 of the *Act* and that the tenants have not been served.

The respondents said they did not serve the tenants with their materials and the tenants confirmed they were not in receipt of any materials from the respondents. The respondent's materials consist of written submissions, their contract for purchase and sale of the property, correspondence with the seller, the tenancy agreement and 2 Month Notice to End Tenancy. While the tenants were not served with the respondents' material I find that much of the contents are documents that were previously available to the tenants and its inclusion will not unreasonably prejudice the tenants nor breach the principles of natural justice. Accordingly, in consideration of the guidance provided by Residential Tenancy Rule of Procedure 3.17 I allow the inclusion of the respondents materials.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the respondents?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. There was a periodic tenancy between the tenants and the previous owner of the rental property which started in 2017. The monthly rent was \$3,895.00 payable on the first of each month.

The tenants were issued a 2 Month Notice to End Tenancy dated June 25, 2020 with an effective date of August 31, 2020. The reason provided on the notice for the tenancy to end is that:

All of the conditions for 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 notice provides the Respondents as the purchasers of the property and a copy of the Buyers Notice to Seller for Vacant Possession signed by the Respondents was also submitted with the 2 Month Notice.

The Respondents confirm that they gave written request to the Seller to issue the 2 Month Notice to take vacant possession of the rental property. The parties agree that as of the date of the hearing the Respondents or close family members have not occupied the rental unit.

The Respondents submit that they were unable to inspect the interior of the rental unit prior to the purchase of the property. They submit that they were unable to determine what would be done with the property until they received vacant possession. The Respondents testified that they gave written request to the Seller to issue the 2 Month Notice on the basis that they would occupy the rental unit, but had not determined whether they would occupy the rental unit at that time. The Respondents submit that

after taking possession of the property they found the rental unit “not what [they] had hoped for” and chose not to occupy it.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 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,

In the 2 Month Notice the previous landlord indicated that the purchasers of the property have requested in writing to issue the notice as the purchaser, or a close family member, intends to occupy the rental unit.

The parties gave undisputed evidence that the two named Respondents are the purchasers of the property, that they gave written request to the seller to issue the 2 Month Notice and that they have not occupied the rental unit as stated on the notice.

The Respondents gave some submissions that the interior of the rental property was not to their satisfaction which was only discovered after the tenancy had ended and the sale of the property completed. I do not find the circumstances to be appropriately characterized as extenuating so that it excuses the Respondents from paying the tenants the amount required pursuant to section 51(3) of the *Act*.

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating.

I do not find the submission of the Respondents to be an example of extenuating circumstances. There is no evidence that the interior of the rental property changed or was substantially altered between the time that the 2 Month Notice was issued and the tenancy ended. The evidence before me is that the Respondents chose to purchase a property despite not examining if it would be appropriate for their intended purposes, requested a notice to end tenancy be issued on the basis that they would occupy the rental unit, and subsequently changed their plans.

I find, based on the undisputed evidence of the parties, that the purchasers did not use the rental unit for the purposes stated on the 2 Month Notice. I find that the circumstances that prevented the purchasers from using the rental unit for its stated purpose is not extenuating and therefore does not excuse the purchasers from their liability under the *Act*.

Consequently, in accordance with section 51(2) of the *Act*, I find that the tenants are entitled to a monetary award of \$46,740.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$46,840.00. The Respondents must be served with this Order as soon as possible.

Should the Respondents fail to comply with this Order, this Order may be filed through the Courts of British Columbia 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: March 18, 2021

Residential Tenancy Branch