



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a monetary order pursuant to section 49 and 51 of the Act, for other money owed and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. All parties confirmed they were not making any unauthorized recording of the hearing.

Issues to be Decided

1. Are the tenants' entitlement to compensation for the landlord ending the tenancy and not using the property for the intended purpose?
2. Are the tenants entitled to other money owed?

Background and Evidence

The tenancy began as a fixed term tenancy that began on September 1, 2019 and was to expire on August 31, 2020. At the end of the fixed term the tenancy will continue on a month-to-month basis. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$300.00 were paid by the tenants.

The tenants confirmed that they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenants stated that on July 2, 2020 the landlords informed them by email that they were ending the tenancy as they were going to move-back into the rental unit at the end of the fixed term agreement. The tenants stated that they have always had an informal relationship with the landlords, and they acted on the email. The tenants argue that the landlord's issued the notice to end tenancy in "bad faith".

Filed in evidence is a copy of the email which in part reads,

"Sorry to let you know but our plans have recently changed and it seems likely that will be coming back to Kelowna to live in September when your lease ends. You have been great tenants and I would be happy to vouch for you or provide references to another prospective Landlord in your search for a new place."

[Reproduced as Written.]

The email thread continued which reads in part,

"Thank you for the heads up, we are looking for a new place. Thank you for the references in advance."

[Reproduced as Written.]

The tenant ES testified that they did not wait for a Two Month Notice for Landlord's Use of Property to be given because they wanted to be able to find new rental accommodations as quickly as possible and because they have a pet that makes it more difficult. ES stated if they waited for a proper notice to be issued, they may not have had sufficient time to find accommodations and did not want to be in that position.

The tenants testified that the female landlord had moved into the rental premise after they vacated; however, the rental unit had been advertised for rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants are seeking compensation pursuant to section 51(2) of the Act, an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement and the cost of moving.

Section 49 of the Act provides that in order to end the tenancy for landlord's use of the property the landlord must give the tenant a 2 Month Notice to End Tenancy in the approved form. Section 5 of the Act does not allow either party to contract outside the Act.

In this case, I do not find that the email dated July 2, 2020, is a notice to end tenancy in the approved form. I find the email is simply giving the tenants advance notice that the landlord would be possibly moving back in September 2020. If the tenants acted on this email before they received a Two Month Notice to End Tenancy for Landlord's Use of Property, due to their informal relationship that was their personal choice as there was no requirement for the tenants to do so.

Further, I find the tenants cannot argue the "good faith" requirements under section 51(2) of the Act. "Good faith" is determined only when a notice to end tenancy had been received and disputed under section 49 of the Act, and the onus is on the landlord to prove they truly intend to use the premise for the stated purpose, and have no ulterior motive for ending the tenancy, such as increasing the rent or not wanting to make necessary repairs that have been requested.

If the landlord has failed to meet the burden of proof on the "good faith" requirement, the Arbitrator would cancel the notice to end tenancy and order the tenancy to continue; however, that is not the case before me as no notice to end tenancy was every received or disputed.

Even if the tenants did receive a Two Month Notice to End Tenancy for Landlord's Use of Property, which they did not, their claim would still fail because the evidence of the tenants was that the female landlord did move into the premise. This would support that the landlord accomplished the stated purpose for ending the tenancy, if such a notice to end tenancy existed.

Based on the above, I find the tenants have failed to prove the landlords ended in the tenancy in accordance with section 49 of the Act, and even if the landlord had, the landlord moved into the premise and the tenants still would not be entitled to compensation under section 51(2) of the Act. Therefore, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application is dismissed.

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: April 30, 2021

Residential Tenancy Branch