



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNETC, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to service of a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on April 30, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 16, 2021 was sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. As the documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Landlord.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenant stated that:

- this tenancy began on December 01, 2017;
- the rental unit was vacated on June 30, 2019;
- at the end of the tenancy the monthly rent was \$1,800.00; and
- rent was due by the first day of each month.

The Tenant stated that the Landlord served the Tenants with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, by posting it on the door on May 28, 2019. The Notice declared that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Notice declared that the Tenants must vacate the rental unit by August 01, 2019. A copy of the Notice to End Tenancy was submitted in evidence.

On, or about, June 15, 2021 the Tenants provided the Landlord with notice, via text message to the property manager, that the Tenants would vacate the rental unit by June 30, 2019.

The Tenant stated that she and the property manager, who is the Landlord's sister-in-law, completed a final condition inspection of the unit on June 30, 2019. During this inspection the Tenant mentioned that a close family member of the Landlord would be moving into the unit and the property manager/sister-in-law stated that the Landlord's friend from Italy would be moving into the unit.

The Tenant stated that the delay in filing this Application for Dispute Resolution was because she misplaced the “eviction paper”.

Analysis

On the basis of the undisputed evidence, I find that:

- the Tenants were paying monthly rent of \$1,800.00 when this tenancy ended;
- on, or about, May 18, 2019 the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use on the door of the rental unit;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the landlord or a close family member of the landlord would be occupying the rental unit;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by August 01, 2019; and
- the rental unit was vacated on the basis of the Two Month Notice to End Tenancy for Landlord's Use.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

On the basis of the statement an Agent for the Landlord, who is the Landlord's sister-in-law, made to the Tenant on June 30, 2019, I find it reasonable to conclude that after this rental unit was vacated it was occupied by a friend of the Landlord. This is based on the Tenant's testimony that the Landlord's sister-in-law informed the Tenant that the Landlord's friend from Italy would be living in the unit. Given the close family relationship to the Landlord, I find that the Landlord's sister-in-law would know who was moving into the rental unit.

As the Landlord did not attend the hearing nor did the Landlord provide any evidence that shows the Landlord or a close family member of the Landlord took steps to move into the rental unit within a reasonable period after the effective date of the notice and/or that shows the rental unit was used for that purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, I find it reasonable to rely on the information provided by the Tenant at the hearing.

In the absence of evidence that shows steps were taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice and/or that shows the rental unit was used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, I find that the Landlord must pay the Tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, which in these circumstances is \$21,600.00.

I find that the Tenants' application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

I find that the Tenants have established a monetary claim of \$21,700.00, which includes \$21,600.00 for compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$21,700.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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: October 21, 2021

Residential Tenancy Branch