



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 28, 2020, wherein the Tenant sought \$12,100.00 in monetary compensation from the Landlord pursuant to section 51(2) and 72 of the *Residential Tenancy Act* (the "Act").

The hearing of the Tenant's Application was originally scheduled on May 4, 2021. Both parties called into the hearing. The Tenant was assisted by her legal counsel, A.C., as well as her granddaughter, C.R. At that time the Landlord claimed to not have received the Tenant's application materials. I accepted the Landlord's submissions and granted an adjournment. This Decision must be read in conjunction with my Interim Decision dated May 17, 2021.

Through inadvertence the matter was adjourned to September 14, 2021 before a different Arbitrator; both parties called into the September 14, 2021 hearing. As I am seized of this matter, the matter did not proceed on September 14, 2021, and was adjourned to a further hearing before me at 9:30 a.m. on October 25, 2021. At that time, the Tenant, her granddaughter and her legal counsel called into the hearing. The Landlord did not call into the October 25, 2021 hearing. Counsel for the Tenant confirmed that an email was sent to the Tenant, her counsel and the Landlord confirming the hearing date. I am satisfied the Landlord was aware of the hearing date and proceeded with the October 25, 2021 hearing in his absence.

On the original hearing date, the parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?
2. Should the Tenant recover the filing fee paid for this Application?

Background and Evidence

In support of her claim the Tenant testified as follows. This tenancy began March 15, 2013. At the time the tenancy ended monthly rent was \$1,000.00.

The Landlord issued the 2 Month Notice to End Tenancy for Landlord's Use on June 30, 2020. The effective date of the Notice was August 31, 2020. The reasons cited on the Notice were that the father or mother of the Landlord or the Landlord's spouse would occupy the rental unit. The Tenant stated that the Landlord's father had passed such that the only person who would qualify was his mother.

The Tenant confirmed she was personally served with the Notice. She further confirmed she moved out of the rental property on August 31, 2020.

The Tenant submitted that the property was not used for the stated purpose, rather, the Landlord sold the property after the tenancy ended.

The Tenant stated that after she got the Notice, she suspected that the Landlord's mother wasn't moving in as she was settled in California with her grandchildren, and the Landlord was also in California and Mexico building houses, etc.

The Tenant also testified that when she was moving out of the property a real estate agent was at the property showing someone the house. At that time the agent asked the Tenant to be out by 1:00 p.m. as she wanted to show the property. The realtor then

went to her vehicle and waited for her clients. The Tenant confirmed that the prospective buyers came to the property while the Tenant was moving her items out.

The Tenant also observed a "For Sale" sign within four days of her moving out. The Tenant confirmed that the Landlord sold the rental property after the tenancy ended, which she believed occurred within a month.

Introduced in evidence before me was a copy of the MLS real estate listing confirming the property was listed for sale as of July 29, 2020. Also introduced in evidence was a photo of the real estate sign indicating the property was sold. Counsel for the Tenant confirmed the photo was taken December 13, 2020.

Counsel for the Tenant also submitted a copy of the Land Title Search performed May 19, 2021, confirming that the sale went through and the new owners are noted as S.S. and B.O. Counsel noted that the Landlord submitted a Land Title Search dated March 16, 2021, which indicated his mother was still the owner. Counsel stated that the Form A Transfer was submitted to the Land Title Office on March 30, 2021 and the new owners were registered as owners on April 10, 2021.

The neighbour, D.E. also testified. He confirmed that he was aware that the Tenant moved out of the property at the end of August 2020. D.E. stated that the property was listed for sale as of July 2020 and then remained vacant until the new owners moved in at the end of March 2021. D.E. confirmed that he met both of the new owners the day they took possession. D.E. stated that he knows the Landlord and his mother and have known both of them for 30 years. He stated that neither the Landlord, nor his mother moved into the property after the tenancy ended. He did note that at the end of December, the Landlord sold another property and moved many of the items from that other property into the rental property for a period of time, but no one lived in it.

Analysis

Section 51 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

In order to determine whether the Tenant is entitled to compensation pursuant to section 51(2) I must determine whether the Landlord took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

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

I find the Landlord issued the 2 Month Notice to End Tenancy on June 30, 2020. The reasons cited on the Notice were that the rental unit would be occupied by the Landlord's mother.

I accept the Tenant's evidence that within six months of the effective date of the Notice, the Landlord sold the rental unit. I am persuaded by the Tenant's testimony that on the

date that she was moving out the Landlord's realtor was showing the property to prospective purchasers. I am further persuaded by her testimony that a for sale sign was erected on the property which later indicated the property sold some time in December.

I also accept the neighbour's testimony that he was familiar with the Landlord and the Landlord's mother and at no time did he observe the Landlord's mother moving into the rental unit, but rather he observed that the property was sold to third parties, whom he has met and are his new neighbours.

I also accept the documentary evidence submitted by the Tenant that the property was sold and that registration of the transfer of ownership was submitted on March 30, 2021. Although this is after the six month's following the effective date of the Notice, I find that at no time did the Landlord use the property for the stated purpose, nor did the Landlord take steps to have his mother reside in the property.

For these reasons I find the property was not used for the stated purpose on the Notice as required by the *Act*.

I therefore find, pursuant to section 51(2) of the *Act*, that the Tenant is entitled to monetary compensation equivalent to 12 months of the monthly rent payable under the tenancy agreement. I find that the monthly rent was \$1,000.00. As such, the Tenant is entitled to the sum of **\$12,000.00** representing 12 months of rent at \$1,000.00 per month.

As the Tenant has been successful in this Application, she is also entitled to recover the **\$100.00** filing fee pursuant to section 72 of the *Act* for a total of **\$12,100.00**.

Conclusion

The Tenant's application for monetary compensation pursuant to section 51(2) is granted. Pursuant to section 67 of the *Act*, the Tenant is entitled to a Monetary Order in the amount of **\$12,100.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 12, 2021

Residential Tenancy Branch