



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 as a result of the Tenant's Application for Dispute Resolution, made on November 17, 2021. The Tenant applied for compensation pursuant to section 51(2) of the Residential Tenancy Act (the Act) and to recover the filing fee pursuant to section 72 of the Act.

The Tenant and KW attended the hearing and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail on November 19, 2021. Photographic images of envelopes bearing a registered mail label including the tracking numbers was submitted in support. KW acknowledged receipt.

On behalf of the Landlords, KW testified that their responsive documentary evidence was served on the Tenant by email on June 10, 2022. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to section 51(2) of the Act?
2. Is the Tenant entitled to recover the filing fee pursuant to section 72 of the Act?

Background and Evidence

The parties agreed the Tenant moved into the rental unit on or about August 15, 2015. KW testified that the Landlords did not consider it to be a landlord/tenant relationship, but a friendship. In any event, the parties signed a written tenancy agreement on January 28, 2017. At all material times, rent of \$1,425.00 per month was due on or before the 15th day of each month. The Tenant paid a security deposit of \$1,200.00. The parties confirmed that \$600.00 was applied to rent during the tenancy and that \$600.00 continues to be held by the Landlords. A copy of the signed tenancy agreement was submitted into evidence.

The Tenant testified that she received a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 6, 2021, which had an effective date of September 15, 2021 (the Two Month Notice). The Two Month Notice was issued on the basis that CW, one of the Landlords, would occupy the rental unit with his children. The parties agreed the Tenant moved out of the rental unit in accordance with the Two Month Notice.

The Tenant testified the rental unit was sold within weeks of moving out of the rental unit. A screen print of an online real estate listing dated October 4, 2021, shows the rental unit listed for sale by that date. In addition, a screen print of an online real estate listing dated October 15, 2021, shows the rental unit was sold by that date.

In reply, the KW acknowledged that the rental unit was sold after the Tenant moved out but stated it was sold on October 26, 2021. KW testified that her son, CW, was having difficulties with his wife at that time. CW had custody of their two children, an infant and a 3-year-old. KW testified that CW had an honest intention to move into the rental unit. Indeed, she testified that CW tried on several occasions to move into the rental unit but acknowledged that their belongings were not moved into the rental unit. KW testified that CW's three-year-old was terrified of the underground parking, the elevator, and the empty apartment. As a result, CW and his children stayed elsewhere, including in hotels, and decided to find alternative accommodation that was safe and healthy for the children.

In addition, KW testified that her husband was diagnosed with an aggressive form of cancer and CW and the children could not spend time there due to the nature of the treatment being received. KW testified that she and CW were exceptionally good landlords and made many concessions during the tenancy.

In response, BC questioned the assertion that the children would be afraid to live in an apartment but would be ok in hotels.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Two Month Notice was issued on the basis that the Landlords, or one of them, would occupy the rental unit.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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 this case, for the reasons that follow, I find the Landlords did not use the rental unit for that stated purpose. Rather, as acknowledged by KW, CW did not move his belongings into the rental unit and the property was sold in October 2021. Indeed, I find that the rental unit was listed and sold by October 15, 2021, within one month after the Tenant vacated the rental unit.

Although I have found that the Landlords did not use the rental unit for the stated purpose, section 51(3) of the Act empowers the director to excuse a landlord from the obligation to pay compensation if there are “extenuating circumstances” that stopped the landlord from doing so.

Policy Guideline #50 provides clarification with respect to the meaning of “extenuating circumstances”:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

In this case, I find there is insufficient evidence of extenuating circumstances which stopped the Landlords from using the rental unit for the stated purpose. I find that the circumstances described by KW are more like the examples that are probably not extenuating circumstances as described in Policy Guideline #50. Although KW testified that CW's three-year-old was afraid of the underground parking, the elevator, and the empty apartment, I was not referred to any additional evidence in support. Further, while I accept that family separation presents challenges, particularly for children, I find that the alleged fears of CW's three-year-old are not sufficient to justify the decision not to move into and sell the rental unit less than one month after the tenancy ended. I note that CW, who was to move into the rental unit, did not attend the hearing to provide evidence due to work obligations.

Considering the above, I find the Tenant is entitled to a monetary order in the amount of \$17,200.00 which is comprised of \$17,100.00 in compensation pursuant to section 51(2) of the Act ($\$1,425.00 \times 12$ months) and \$100.00 in recovery of the filing fee pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a monetary order in the amount of \$17,200.00. The order must be served on the Landlords. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 20, 2022

Residential Tenancy Branch