



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 Tenants' Application for Dispute Resolution, made on December 19, 2022. The Tenants applied for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants were represented at the hearing by MK. The Landlord attended the hearing on his own behalf and was accompanied by IN, his spouse, who did not participate in the hearing. MK and the Landlord provided affirmed testimony.

On behalf of the Tenants, MK testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt. In addition, the Landlord testified that the documentary evidence in response to the Tenants' application was served on the Tenants by registered mail. MK confirmed receipt on behalf of the Tenants.

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 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. Are the Tenants entitled to compensation from the Landlord related to the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on March 1, 2021 and ended on August 1, 2022, pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2022 (the Two Month Notice). The parties agreed that rent was \$1,200.00 per month. The parties also agreed the Tenants paid a security deposit of \$600.00, which was returned at the end of the tenancy.

On behalf of the Tenants, MK submitted that the Landlord has not done what was indicated in the Two Month Notice as the basis for ending the tenancy. Specifically, MK testified that he moved to a rental unit "down the street." MK testified that he drives by the rental property numerous times daily and asserted that no one is living there.

In support, the Tenants submitted two photographs of a driveway covered with snow, a photograph of a driveway covered with leaves, a photograph of a yard covered with leaves, a photograph of a yard with no leaves and not recently mowed.

MK also asserted that the Landlord ended the tenancy merely because he wants to increase rent. The Tenants relied on a text message from the Landlord dated March 26, 2022, in which he advised that the tenancy agreement ended on March 1, 2022, and that rent would increase to \$1,400.00 on June 1, 2022.

The Tenants also submitted a text message from the Landlord dated March 27, 2022, in which he advised that the Tenants would be receiving a "four months End of Tenancy Notice" instead of renewing the tenancy. The Landlord stated he could achieve rent of \$1,600.00 for the whole house. The Landlord also notes that he intends to "continue with renovation of the property." MK noted the Two Month Notice was issued soon after.

The Landlord testified that he and his family currently live in Surrey. He testified that he has been to the rental property for at least one week out of each month since the tenancy ended to perform renovations. The Landlord confirmed that his family intends to live in Surrey until his daughter (who is currently in Grade 11) graduates from high school. At that time, the Landlord and his family will move to the rental property. Until then, the Landlord describe the property as a second home.

In support, the Landlord submitted multiple receipts for purchases made in or near the community in which the rental property is located. The Landlord also submitted photographs of family members at the rental property.

MK submitted that the receipts could belong to anyone, and noted that the photographs do not depict images of the Landlord and his family living at the rental property.

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 Landlord and his family would occupy the rental property.

However, section 51(2) of the Act provides that compensation may be due if a 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.

As stated in Policy Guideline #50:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

The burden of proving they have accomplished the above is on the Landlord.

In this case, I find the Landlord failed to demonstrate that he accomplished the stated purpose for ending the tenancy. Rather, based on the Landlord's own testimony, I find that the Landlord and his family do not reside in the rental property. Instead, the Landlord and his family continue to live at their home in Surrey and intend to continue to do so until his daughter, currently in Grade 11, graduates from high school. While I accept that the Landlord and his family have attended the rental property to perform renovations, I find that renovations for the Landlord's future use of the rental property is not a basis upon which to end a tenancy under section 49 of the Act.

Although I have found that the Landlord did not use the rental unit for the stated purpose for at least 6 months' duration, 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. I find there is insufficient evidence before me to conclude there were extenuating circumstances that prevented the Landlord from using the rental property as indicated in the Two Month Notice.

Considering the above, I find the Tenants are entitled to compensation of \$14,400.00 pursuant to section 51(2) of the Act ($\$1,200.00 \times 12 = \$14,400.00$). Having been successful, I also find the Tenants are entitled to recover the filing fee paid to make the application.

I grant the Tenants a monetary order for \$14,500.00, which is comprised of \$14,400.00 as compensation and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$14,500.00. The order must be served on the Landlord. 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: January 27, 2023

Residential Tenancy Branch