



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 November 21, 2022. The Tenants applied for compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 31, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants and the Landlords attended the hearing and provided affirmed testimony.

Based on the testimony of the Landlords and with the agreement of the Tenants, I amend the Tenants' application to include the correct spelling of JP's name, pursuant to section 64(3) of the Act.

On behalf of the Tenants, SM testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail. The Landlords acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The Landlords 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.

On behalf of the Landlords, RP testified that the documentary evidence uploaded to the Residential Tenancy Branch Dispute Management System (DMS) in response to the Tenants' application was not served on the Tenants. Accordingly, the evidence submitted to DMS but not served on the Tenants has not been considered in reaching a decision.

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 Landlords related to the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants testified the tenancy began on June 1, 2016. However, the Landlords advised that they purchased the rental property in 2022 and did not know when the tenancy began. The parties agreed the tenancy ended on September 30, 2022, pursuant to the Two Month Notice. On behalf of the Tenants, SM testified that rent at the end of the tenancy was \$1,724.00 per month. In support, the Tenants submitted a statement showing a rent payment of \$1,724.00 on June 30, 2022. Again, the Landlords testified they were unaware of the details of the tenancy, including the amount of rent due. The Tenants testified they did not pay a security deposit.

A copy of the Two Month Notice was submitted into evidence. It was issued on the basis that all the conditions for the sale of the rental unit were satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intend in good faith to occupy the rental unit.

The Tenants asserted that the Landlords have not done what was indicated in the Two Month Notice as the basis for ending the tenancy. On behalf of the Tenants, SM testified that the rental unit does not appear to be occupied. SM also referred to Facebook advertisements, copies of which were submitted into evidence. In the first advertisement, the unit was described as a 1 bedroom, 1 bathroom unit for \$1,000.00 per month. In the second advertisement, the unit was described as a 2 bedroom, 1 bathroom unit for \$2,300.00 per month. The Tenants confirmed that the unit represented in the Facebook advertisements were of the rental unit.

On behalf of the Landlords, RP acknowledged that the Landlords do not live in the rental property. However, RP testified that the Landlords' daughter is living in the rental unit while attending school. In addition, RP testified that JP is often at the rental property. Specifically, RP testified that JP was at the property in October to do some renovations and in January to do maintenance.

With respect to the Facebook advertisements, RP testified that her brother posted the Facebook advertisements. However, the Landlords did not rent the unit because the Landlords' daughter expressed concerns about her safety.

Analysis

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

Section 49(5) of the Act allows a landlord to end a tenancy if all the conditions for the sale of the rental unit were satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intend in good faith to occupy the rental unit.

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 six months' duration, beginning within a reasonable period after the effective date of the notice. The Landlords bear the onus of proving they did what was stated as the reason for ending the tenancy.

In this case, I accept that the Two Month Notice was issued by the seller of the rental property at the request of the Landlords who purchased it. I also find, based on the affirmed testimony of RP, that the Landlords are not currently occupying the rental unit. In addition, I find there is insufficient evidence before me to find that the Landlords' daughter is occupying the rental unit. The Landlords' daughter did not attend the hearing to provide testimony, and the rental unit in the photographs included in the Facebook advertisements does not appear to be occupied.

Although I have found that the Landlords 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 Landlords from using the rental property as indicated in the Two Month Notice.

Considering the above, I find the Tenants are entitled to compensation of \$20,688.00 pursuant to section 51(2) of the Act ($\$1,724.00 \times 12 = \$20,688.00$). Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

The Tenants are granted a monetary order for \$20,788.00, which is comprised of \$20,688.00 as compensation and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$20,788.00. 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: February 3, 2023

Residential Tenancy Branch