



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ROYAL LEPAGE EAST KOOTENAY REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice).

The tenants attended the hearing; however, no one for the respondents/landlords attended. The tenants were affirmed.

The tenants testified they served each of the landlords with the tenants' application for dispute resolution, evidence, and notice of hearing (application package) by registered mail. The tenants filed the Canada Post proofs of service in evidence.

The tenants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenants said that landlord DB did not collect their registered mail. The registered mail for landlord RLEKR was collected according to the tenants. The agent for RLEKR, DK, confirmed they received the registered mail, according to the tenants.

The tenants submitted that they never met or dealt with the owner, as DK was the only one they dealt with during this tenancy.

The tenants submitted they understood DB was the owner, and they served DB at the former rental unit as they thought DB would be moving there. I find there was insufficient evidence to show that DB was served by registered mail to where they resided or by personal service. For this reason, I do not find that the respondent, DB, was served in accordance with section 89(1) of the Act. I excluded DB from further consideration in this matter for this reason.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Background and Evidence

The tenants submitted that the tenancy began on February 1, 2020 and ended on May 31, 2022. The monthly rent at the end of the tenancy was \$1,116.50. Filed in evidence was the written tenancy agreement showing RLEKR as the landlord.

The tenants' monetary claim is \$13,398, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, or \$1,116.50.

The tenants wrote in their application the following:

The landlord/home owner has not accomplished the stated purpose for ending the tenancy within a reasonable period of time and has not used the rental unit for the stated purpose. The house is still vacant, grass is uncut and the mail has not been returned since June and renovations have been started.

[Reproduced as written]

The Notice received from the landlord, RLEKR, was dated March 14, 2022, listing an effective move-out date of June 1, 2022. DK signed the Notice and RLEKR was listed as the landlord. Filed in evidence was a copy of the 2 Month Notice.

The tenants stated that they drive past the rental unit many times, and nothing has been done. For instance, the yard is overgrown and there is no one living there. Additionally, as shown by their photos, the house has changed appearance, showing that there were significant renovations to the home. The tenant said that they are friends with the neighbours and have been kept informed, being told that no one resides in the property. Filed in evidence were pictures of the rental unit and property.

Analysis

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

As the landlord or agent failed to attend the hearing, I consider the tenants' application unopposed.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

Section 51(2) provides that if 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 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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 this case, there is no dispute that RLEKR has acted solely as the landlord during this tenancy, with their name being on the written tenancy agreement **and** the 2 Month Notice, **as landlord**. They did not designate that they acted on behalf of the owner on either document. The tenants said without dispute that they never met the owner.

The 2 Month Notice given to the tenants by RLEKR listed RLEKR as landlord, and that the landlord or landlord's spouse will occupy the rental unit.

Based on the evidence before me, I find the landlord has provided no evidence that they complied with the reason stated on the 2 Month Notice. I also find the tenants submitted sufficient evidence to show the rental unit remains empty and that no one has moved into the home since they vacated.

As the landlord RLEKR failed to attend the hearing, there was no issue raised of extenuating circumstances.

Further, no one for the landlord attended to raise an issue about whether they were acting only as an agent. Furthermore, even if that had been the case, the landlord company may wish to include the actual landlord owner name as the person intending to occupy the rental unit in the event they issue 2 Month Notices in the future.

For the above reasons, I therefore find the tenants are entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As a result, I grant the tenants a monetary award of **\$13,398**, which is the equivalent of the monthly rent of \$1,116.50 for 12 months.

I find merit with the tenants' application and award them recovery of their filing fee of **\$100**, pursuant to section 72(1) of the Act.

As a result of the above, I grant the tenants a monetary order (Order) of **\$13,498**.

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application is granted in full as I find they submitted sufficient evidence to support their claim.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 19, 2023

Residential Tenancy Branch