



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

The tenant applicant seeks \$26,400.00 in compensation against the landlord pursuant to sections 51(2) and 72(1) of the Residential Tenancy Act (the “Act”). The tenant also seeks compensation for reimbursement of the filing fee in the amount of \$100.00.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 48 minutes to allow the landlord the opportunity to call.

The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord was provided.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

The hearing continued. The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

Preliminary Issue – Service

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 28, 2022, and deemed received by the landlord under section 90 of the *Act* five days later, that is, December 3, 2022.

The tenant submitted as evidence a copy of the mailing receipt which included the Canada Post Tracking Number.

The tenant submitted as evidence a copy of the Two Month Notice which provided the address for service of the landlord. The tenant testified she sent the registered mail to that address. This was the only address she had for the landlord. The landlord had never informed her of any different address.

Pursuant to the landlord's credible and supported evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on December 3, 2021.

Issue(s) to be Decided.

Is the applicant entitled to compensation and reimbursement of the filing fee?

Background and Evidence

Relevant evidence, complying with the Rules of Procedure, was carefully considered in reaching this decision. Only admissible oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The Tenancy

The tenancy began in August 2021 and ended on August 31, 2022. The tenant paid \$2,200.00 in monthly rent. The tenant submitted a copy of the tenancy agreement.

Two Month Notice

The landlord personally served a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") on the tenant. A copy of the Notice was submitted which is in the standard RTB form.

The Notice was dated July 8, 2022, and effective September 30, 2022. The tenant moved out August 31, 2022. The tenant received one month rent as compensation.

The tenant testified that, as stated on page two of the Notice, it was her understanding that the tenancy was being ended so that the father or mother of the landlord or landlord's spouse ("the landlord's parents") could occupy the unit.

The Notice stated in part:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☒ The father or mother of the landlord or landlord's spouse

Tenant's Evidence of Occupancy

Upon returning to the rental unit a short while after moving out to retrieve her mail, the tenant did not see any evidence of anyone moving into and occupying the property. She drove through and visited the area regularly in the following months and again saw "no sign of activity" in the house. The tenant drove by the house on her way to and from work/activities and never saw a light in the unit or any sign anyone lived there. The tenant testified the unit appeared quiet and unoccupied.

During the 4-month period after she moved out, the tenant often spoke with the downstairs tenant when she came to collect her mail. The downstairs tenant told her that no one had moved into the unit.

The tenant submitted as evidence a copy of a text from the downstairs occupant stating, "There is no one living in the upstairs part for the last months.". The tenant stated she received the text on November 8, 2022, over two months after moving out.

The tenant spoke with a neighbour friend who also informed her that no one had moved into the unit for several months after the tenant moved out.

The tenant learned in January 2023 that someone finally moved into the unit, the fifth month after moving out. The tenant knocked on the door of the unit which was answered by a young mother who told the tenant she was the new occupant. The tenant believed this person was not the landlord's parents and that she had moved permanently into the rental unit.

These observations reinforced the tenant's idea or belief that nobody had moved in the unit for at least 6 months after she moved out.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for compensation under section 51(2) of the Act.

Section 51(2) of the Act reads as follows:

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 the landlord or purchaser, as applicable, does not establish that.

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been 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 was served with notice for this hearing and has failed to attend.

Based on the tenant's credible evidence, it is my finding that the tenant has established that it is more likely than not that the facts occurred as claimed. That is, the stated purpose for ending the tenancy was not accomplished within a reasonable period after August 31, 2023. I find the unit was vacant for at least 4 months and then occupied by someone other than the landlord's parents.

An Arbitrator may excuse a landlord under section 52(3) from paying the tenant under this claim if there were extenuating circumstances. However, there is no evidence from the landlord to establish any reason whatsoever for their failure (or the failure of the persons on whose behalf the Notice was issued) to occupy the unit.

I agree with the tenant's reasonable conclusions in all aspects. I find the tenant has met the burden of proof for a successful claim under section 51.

Thus, pursuant to section 51(2) of the Act, the respondent landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement which in this case is \$26,400.00.

2. Award – Filing fee

As the tenant has been successful in her claim, she is entitled to an award of \$100.00 for reimbursement of the filing fee.

3. Summary

The tenant is granted a Monetary Order in the amount of \$26,500.00 against the landlord.

Conclusion

For the reasons set out above the application is hereby GRANTED.

I issue a Monetary Order of \$26,500.00 to the applicant.

The applicant must serve a copy of the Monetary Order upon the respondent. The applicant may, if necessary, enforce the monetary order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: May 11, 2023

Residential Tenancy Branch