



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Compensation in the amount of \$8,400.00 for failure of landlords to comply with section 49 of the *Residential Tenancy Act* [the 'Act'].
2. Reimbursement for the \$100.00 filing fee for this application.

The tenants appeared at the hearing on 27 June 2023. The landlords did not.

Preliminary Matter - Non-appearance at the Hearing

The landlords did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1330 hours and ended about 45 minutes later. I confirmed:

1. that the tenants affirmed that on 20 April 2023 they sent a copy of this Notice of Dispute Resolution Proceeding *via* registered mail to the address of the landlords as recorded by the Land Title Office;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Dispute Resolution Proceeding; and
3. by reviewing the teleconference system, that the tenants and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

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 re-apply.

The landlords failed to attend this hearing, but I conducted it in their absence. The tenants' evidence satisfied me that they had correctly notified the landlords of this hearing and how to participate.

Issues to be Decided

Did the landlords comply with section 49 of the Act by either occupying the rental unit themselves, or having a close family member occupy the unit?

Should the landlords reimburse the tenants for the cost of filing this application?

Background & Evidence

The tenants affirmed to me the following about this tenancy:

1. they paid \$700.00 *per* month in rent;
2. in May 2021, they received a Two-month Notice to End Tenancy for Landlord's Use of Property [the 'Notice'];
3. the Notice recorded that the landlords (who had just purchased the unit), or a close family member of theirs, intended to move into the unit;
4. the tenants moved out by August, in compliance with this Notice;
5. the tenants found another place to live in the same area, and so could regularly drive past the rental unit;
6. the tenants observed that the unit was uninhabited from August to November, having peered into the windows of the unit (which had no curtains) and determining that during this period the unit was empty;
7. by November 2021, signs appeared in the windows of the unit, advertising it for rent;
8. the tenants contacted the phone number that appeared on the rental signs and enquired about the terms of the rental, and arranged to view the unit as a prospective tenant;
9. on 20 December the tenants viewed the unit with a rental agent, and determined that the unit was uninhabited;

10. by 1 April 2022, the tenants observed people now living in the unit; and
11. the tenants spoke with these people, who confirmed that they were not related to the landlords, and learned of the unit by noticing the signs posted in the windows.

The tenants corroborated this testimony with photo's of the Notice and of the rental signs, taken in December 2021 and in February and March 2022; and with screenshots of communications with the rental agent.

Analysis

In analysing this dispute, I rely upon Residential Tenancy Policy Guideline 2A: 'Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member' [the 'Guideline']. This Guideline reads, in part:

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) 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.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

The Guideline also reads that, 'section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused'.

The affirmed and uncontroverted evidence of the tenants satisfies me that neither the landlords nor their close family member occupied the unit, meaning that they did not accomplish their purpose for ending the tenancy as stated in the Notice. Indeed, the unit probably was vacant and unused from August 2021 to no later than April 2022. And when it did get used, it was occupied by people who are neither the landlords nor their close family members.

Section 51 (2) of the Act is clear that in circumstances such as these the landlords are liable to the tenants for 12 times the rent, which amounts to \$8,400.00.

As the tenants have succeeded in their application, I also agree that the landlords ought to reimburse them for the cost of filing.

Conclusion

I order that the landlords pay to the tenants \$8,400.00 for unpaid rent *per* section 51 (2) of the Act, along with a further \$100.00 for the filing fee.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 31 July 2023

Residential Tenancy Branch