



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HEYDAY REALTY INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on November 1, 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 February 7, 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 ND and EM. SS attended the hearing on behalf of the corporate Landlord. Although not named in the Tenants' application, LXL identified himself as a landlord and is named in the tenancy agreement submitted into evidence. Therefore, I find it is appropriate to amend the application to include LXL as a party to this proceeding, pursuant to section 64 of the Act. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, ND testified that the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail. Receipt of these documents was acknowledged, and no issues were raised during the hearing with respect to service. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

On behalf of the Landlord, LXL testified that the documentary evidence submitted to the Residential Tenancy Branch Dispute Management System was not served on the Tenants. As these documents were not served on the Tenants in accordance with the Act, they have 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?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on February 1, 2021 and that the tenancy ended on April 30, 2022, in accordance with the Two Month Notice. At all material times, rent was due in the amount of \$3,800.00 per month. The parties agreed the Tenants paid a security deposit of \$1,900.00 which was returned to the Tenants at the end of the tenancy. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Tenants, ND testified that the Two Month Notice was received on February 7, 2022 and had an effective date of April 30, 2022. The Two Month Notice submitted into evidence was issued on the basis that the unit would be occupied by the Landlord or the Landlord's close family member.

ND testified that the rental property was demolished on or before October 25, 2022, less than six months after the effective date of the Two Month Notice. In support, the Tenants submitted three photographs, taken on October 25, 2022, depicting the completely demolished rental property.

In reply, LXL testified that he did move into the rental property but acknowledged it was demolished on or just before October 25, 2022. LXL testified that he lived in the rental property for a period but that his parents decided to demolish it because it did not suit their needs. LXL also testified he was not aware of the six-month requirement under the Act. LXL also noted that the property was demolished just before the expiry of the six month requirement under the Act.

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 or the Landlord's close family member would occupy the rental unit.

Section 51(2) of the Act provides that compensation may be due to a tenant if the 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.

In this case, for the reasons that follow, I find the Landlords did not use the rental unit for that stated purpose for at least 6 months' duration after the effective date of the Two Month Notice. While I accept that LXL lived in the rental property for a period of time, it was not disputed that it was demolished on or before October 25, 2022. With respect to LXL's submission that the property was demolished only one week before the expiry of the six months after the effective date of the Two Month Notice, I note again that the Act requires the rental unit to be used for the stated purpose for *at least* 6 months' duration.

I also find there were no extenuating circumstances which prevented the Landlords from accomplishing the stated purpose for ending the tenancy that would excuse the Landlords from paying compensation to the Tenants under section 51(3) of the Act. Indeed, LXL merely testified that his parents decided to demolish the property because it did not suit their needs.

Considering the above, and in accordance with sections 51 and 72 of the Act, I find the Tenants are entitled to compensation of \$45,600.00 (\$3,800.00 x 12 months) and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$45,700.00. The order may be filed in and enforced as an order of the Supreme 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: August 17, 2023

Residential Tenancy Branch