



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions on file.

Issues

Is the tenant entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy began with the previous owners on November 1, 2020. The current landlord purchased the property in December 2022. The monthly rent prior to the end of the tenancy was \$800.00. The rental unit is a mobile home on a farm. There is one additional mobile home on the property as well as main house.

On February 22, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of June 1, 2022. The notice was issued on the grounds that the father or mother of the landlord or the landlord's spouse intends to occupy the rental unit. A copy of the Two Month Notice was submitted as evidence.

The tenant vacated the rental unit on May 31, 2022, as per the effective date of the Notice.

The tenant is claiming an amount equivalent of twelve times the monthly rent as compensation due to the landlord not using the rental property for his own use after issuing the Two Month Notice.

In support of his claim the tenant submits as follows:

- After the current landlord purchased the property, he initially gave notices to vacate to the tenants in both the mobile homes and the main house.
- The notice was an illegal notice just written on a piece of paper stated the grounds as the landlord and the landlord's family will move into and farm the property.
- The tenant submitted two audio recordings with the landlord.
- The tenant submits that as per the audio recordings, the landlord could not provide any definite reason for who would be occupying the unit and also tried to get the tenant to agree to a rent increase.
- Subsequently, the landlord issued the Two Month Notice in the proper form.
- The tenant originally disputed the Two Month Notice but then withdrew his application as he found a place to live.
- Since vacating, friends that live in the area have told him the unit has sat empty for 6 months.
- He has also driven by and noticed the unit remained empty.
- In November 2022 he came across a listing advertising the unit for rent at rate of \$1600.00 per month. A copy of the listing was submitted as evidence.
- The tenant submits that the pictures used in the listing show the unit exactly as he left it with no evidence of anyone living there in between.

The landlord submits as follows:

- He purchased the property in December 2022.
- He gave Two Month Notice as he was moving from Delta BC to Erickson BC to farm the property.
- He, his wife, and son moved into the main house on the farm on June 1, 2022.
- His mother-in-law moved into the mobile home on this same date.

- On October 25, 2022 his mother-in-law went to India as her son was really sick. An airline ticket and doctor's certificate were submitted as evidence.
- It became financially difficult for the landlord to keep the unit empty as his mother-in-law was away so he re-rented the unit on December 17, 2022 with a move-in date of January 1, 2023 for the new tenants.
- His mother-in-law occupied the unit for at least 6 months as required.
- An electricity bill was submitted as evidence to show the mobile home utility bills were in the landlord's name.

In reply, the tenant submits the landlord has not provided any evidence to support his mother-in-law actually lived in the unit.

Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. The onus is on the landlord to establish that the stated purpose for ending the tenancy was accomplished.

Although the landlord provided evidence to support that his mother-in-law flew to India to be with her sick son in October 2022, I find the landlord failed to provide sufficient evidence to support that she was residing in the rental unit at the time and that she did so since June 1, 2022. The only piece of evidence submitted in support was the electricity bill in the landlord's name. As stated above, the onus is on the landlord to establish the purpose for ending the tenancy was accomplished. I find an electricity bill on its own is insufficient to meet this onus. Rather, I find the evidence on file, including the initial illegal notice, the audio recordings of the rent increase attempts, and the unit being re-listed immediately after the 6 month period expired demonstrates the landlord never had any intention to occupy the rental unit.

I allow the tenant's claim and award an amount of \$9700.00, which is twelve times the monthly rent of \$800.00 plus the \$100.00 filing fee.

Conclusion

I grant the tenant a Monetary Order in the amount of \$9700.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 30, 2023

Residential Tenancy Branch