



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement and to recover the filing fee.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue:

The tenant's application listed an additional landlord, which was challenged by the first listed landlord. The additional landlord's name did not appear on the tenancy agreement and did not appear to ever act as a landlord. As a consequence, I have not listed or considered that additional landlord for the purposes of this Decision.

Issue(s) to be Decided

Has the landlord breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the tenant to a monetary order for money owed or compensation for damage or loss and to recover the filing fee?

Background and Evidence

This 6 month, fixed term tenancy started on October 1, 2010, ending on March 31, 2011, continued on a month to month basis thereafter, until it ended on May 31, 2011,

as a result of the tenant receiving a 2 Month Notice to End the Tenancy for Landlord's Use of the Property.

In an earlier dispute resolution proceeding, the landlord received an order of possession, effective May 31, 2011.

I heard testimony that the tenant received compensation of \$1,000.00 as a result of receiving the 2 Month Notice.

The tenant's relevant evidence included a statement from a friend, the Notice, and a letter from the landlord.

The tenant submitted that she is entitled to receive an amount equivalent to 2 months' rent, or \$2,000.00, the amount listed in her application, as she alleged the landlord did not use the rental unit for the stated purpose in the Notice for at least 6 months following the end of the tenancy, which was the reason listed to end the tenancy.

In support of her application, the tenant submitted that in October 2011, she observed a delivery truck parked in front of the rental unit on several occasions and that a male occupant appeared to be residing in the rental unit. Additionally, the statement from the tenant's friend confirmed the presence of the delivery truck and that a male occupant answered the door.

In response, the landlord submitted that the rental unit is her summer home in which she and her family, including her mother, live every summer and that it is rented out only during the winter months, which is the reason there was a short, fixed term listed on the tenancy agreement. The landlord stated that the tenant was aware that the rental unit was to be used by the landlord and her family during the summer months and that the tenant understood she would have to vacate prior to the summer, 2011. In support of this submission, the landlord stated that the rental unit was entirely furnished so that her family did not have to move their possessions in and out each year and to accommodate tenants for a short term tenancy.

The landlord acknowledged that the rental unit was re-rented effective September 15, 2011, as it is every year for the winter months.

The landlord stated that the tenancy agreement converted to a month to month during this particular tenancy due to landscaping which was to take place prior to the summer of 2011, as she would allow the tenant to stay an additional 2 months, if she, the tenant, so chose. As a result of the continuation of the tenancy on a month to month basis, the

landlord was compelled to issue a 2 Month Notice to End the Tenancy and the tenant was compensated the equivalent of 1 month's rent.

The landlord testified that she and her family, including her mother, did move in and use the rental unit for the entire summer, at the end of which the rental unit was re-rented as it is every year for the winter months.

The landlord's relevant evidence included a copy of the tenancy agreement, the latest tenancy agreement for a subsequent tenant, indicating a 5 month, fixed term tenancy ending on February 15, 2012, an order of possession issued by the Residential Tenancy Branch, and credit card statements indicating charges made locally during the summer months.

Analysis

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

In order to justify payment of loss under section 67 of the *Act*, the Applicant tenant bears the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

Section 51 (2) of the Residential Tenancy Act provides if steps have not been taken to accomplish the stated purpose for ending the tenancy listed on a Notice to end a tenancy under section 49 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 beginning within a reasonable period after the effective date of the notice, the landlord **must** pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[emphasis added]

The stated purpose of the 2 Month Notice to End Tenancy was that the landlord needed occupancy of the rental unit in order that she, her spouse or a close family member could move in. While I accept that the landlord immediately used the rental unit for the stated purpose upon the tenant vacating, I find that the landlord did not use the rental unit for that reason for a period of at least 6 months following the end of the tenancy.

In reaching this conclusion, the landlord confirmed through testimony and her evidence that after the summer months, the rental unit was again re-rented, on September 15, 2011.

I therefore find that the landlord did not comply with section 51 (2) (b) of the Act and therefore the landlord must pay the tenant an amount equal to two months' rent.

Conclusion

I therefore find the tenant has established a **monetary claim** in the amount of **\$2,050.00**, comprised two times the monthly rent of \$1,000.00 and recovery of the filing fee of \$50.00.

I am enclosing a monetary order for \$2,050.00 with the tenant's Decision, which may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: January 17, 2012.

Residential Tenancy Branch