



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's application in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenants provided affirmed testimony that on December 4, 2013 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the landlord. The tenants used the landlord's service address included on the tenancy agreement. The tenants supplied a copy of the envelope which shows the mail was sent on December 4, 2013. The envelope has been stamped by Canada Post "return to sender...refused by addressee"

Section 90 of the Act determines registered mail is deemed served on the 5th day after mailing. The landlord has been served in accordance with section 89 of the Act; to the service address provided to the tenants. Refusal to accept registered mail does not allow a party to avoid service of documents.

Therefore; I find, pursuant to section 90 of the Act, these documents are deemed to have been served effective December 9, 2013. The landlord did not attend the hearing.

Issue(s) to be Decided

Are the tenants entitled to compensation, in accordance with section 51 of the Act, in the sum of \$3,000.00?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 1, 2012; rent was \$1,500.00 per month.

On August 27, 2013 the landlord issued a 2 month Notice to end tenancy for landlord's use of the property. The Notice indicated that the landlord of a close family member would occupy the unit.

The tenants exercised their right to give written notice and vacated the unit within the 10 day time frame allowed.

The landlord had previously mentioned he might place the unit on the market; the tenants had no problem with showings and wished to remain in the unit, hoping a new owner would continue the tenancy.

On November 4, 2013 the tenants checked the MLS web site and discovered that the unit was listed for sale. Copies of the listing advertisement were supplied as evidence. The address on the detailed listing was the same as the rental unit. One notation on the advertisements showed the ad had been updated on October 24, 2013; another was dated November 4, 2013.

The tenants stated the landlord has breached the Act by failing to occupy the unit for at least a 6 month period of time. The tenants did not suggest the landlord was not residing in the unit, only that he had issued the Notice with an ulterior motive of listing it for sale.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 51 of the Act provides:

Tenant's compensation: section 49 notice

- 51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*
- (1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*
- (1.2) *If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*
- (2) *In addition to the amount payable under subsection (1), if*
(a) 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
(b) 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 the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

(Emphasis added)

From the evidence before me I find that the landlord issued the 2 month Notice to end tenancy for landlord's use based on the reason the landlord or a close family member

was going to reside in the unit. It appears that as early as October 24, 2013 the unit was listed for sale; as shown on the listings supplied as evidence. This was in direct contradiction to the reason given for ending the tenancy.

The landlord had the right to possess the unit and was required to do so for at least 6 months after the tenancy ended. I find that the landlord has failed to comply with section 49(3) of the Act, which required the landlord or a close family member, to occupy the unit.

The tenants did not dispute the Notice as they believed the landlord or a family member was going to occupy the unit. However, even if the landlord or a close family member has occupied by the unit, by holding it in their possession, the landlord needed to do so for at least a 6 month period of time; which expired in February 2014.

I find that placing the unit for sale within the 6 month period during which the landlord had declared he or a close family member would occupy is a breach of section 49 of the Act. Therefore, I find that the tenants are entitled to compensation in accordance with section 51(2) of the Act; in the sum of \$3,000.00.

I find that the tenant's application has merit and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$3,050.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to compensation as claimed.

The tenants are entitled to filing fee costs.

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: April 02, 2014

Residential Tenancy Branch

