



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person by the tenants witness RL on June 15, 2016 at 2.45 p.m.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this was a fixed term tenancy which started on February 01, 2015 and was not due to expire until February 01, 2016. Rent for this unit was \$1,100.00 per month due on the first of each month.

The tenant testified that the landlord served her with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) on August 26, 2015. The tenant filed an application to dispute the Notice but was unsuccessful and the tenancy ended on October 31, 2016. The tenant agreed she did receive one month's rent in compensation for the Notice. The tenant testified that at the previous hearing she did not mention to the Arbitrator that this was a fixed term tenancy.

The tenant testified that the Notice provided two reasons to end the tenancy. The first was that the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or the landlord's spouse. The second reason was that the landlord had all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires vacant possession.

The tenant testified that she was contacted by a person who claimed to have moved into the rental unit on December 01, 2015. That tenant provided a copy of his tenancy agreement to the tenant who has provided it in documentary evidence. This tenancy agreement shows the new tenant's tenancy started on December 01, 2015 for a monthly rent of \$1,700.00. The tenant testified that this new tenant has also written and stated that the landlord did not move into the unit. This tenant agreed to rent the unit and paid a security deposit on November 20, 2015 and no renovations were done to the rental unit.

The tenant testified that when the landlord purchased the unit in July 2015 while the tenant was living in the unit, the landlord wanted to raise her rent by 40 percent. When

the tenant told him he could not do this he then gave her the Notice to end her tenancy. The tenant testified that this was clearly the landlord's motivation in raising the rent.

The tenant seeks compensation equal to two months' rent to an amount of \$2,200.00 as the landlord did not use the rental unit for either purpose as stated on the Notice.

The tenant also seeks to recover the cost to move her belongings from the unit of \$500.00 as the landlord was not legally allowed to end her tenancy due to the fixed term contract she had. The tenant also seeks to recover an undisclosed amount to serve hearing documents upon the landlord.

Analysis

After careful consideration of the undisputed testimony and documentary evidence before me I find as follows: This was a fixed term tenancy which could not have been legally ended until February 01, 2016; however, the tenant agreed that this was not disclosed to the Arbitrator at the previous hearing and therefore the tenant vacated the rental unit in accordance to the effective date of the Two Month Notice on October 31, 2015.

With regard to the tenant's claim for compensation as the rental unit was not used for its intended purpose provided on the Notice. I refer the parties to s. 51(2) of the *Act* which states:

(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 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.

From the evidence presented I find the landlord did not move into the rental unit and occupy it for a minimum of six months and did not do renovations on the rental unit that required vacant possession. The landlord clearly re-rented the unit at a significantly higher rent on November 20, 2015 for a tenancy that started on December 01, 2015. I am therefore satisfied that the landlord did not use the property for its intended purpose as stated on the Notice and consequently the tenant has established a claim to recover compensation equivalent to two months' rent. The tenant will receive a Monetary Order to the amount of **\$2,200.00** pursuant to s. 67 of the *Act*.

With regard to the reminder of the tenant's claim for \$500.00 for moving costs; the purpose of the tenant receiving compensation equal to one month's rent at the end of the tenancy is to provide compensation to help with the tenant's moving costs. As the tenant did receive this compensation and did not have to pay rent for October, 2015 to the landlord then no further compensation is permitted under the *Act*. This section of the tenants' claim is therefore dismissed.

With regard to the tenant's claim for costs incurred to serve the landlord. There is no provision under the *Act* for costs incurred in the service of hearing documents to another party. Furthermore, as the tenant's friend served the hearing documents to the landlord no costs were actually incurred. This section of the tenant's claim is dismissed.

As the tenants' claim has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,300.00**. The Order must be

served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: October 03, 2016

Residential Tenancy Branch

