



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an application for dispute resolution filed by the tenants on June 27, 2018, under sections 51(2), 67 and 72(1) of the *Residential Tenancy Act* (the “Act”).

A dispute resolution hearing was convened on November 20, 2018, and the tenant, the landlord, and a witness for the landlord attended the hearing before me. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that this file was crossed with another application made by the landlord on October 25, 2018. However, for the reasons set out in a separate Interim Decision pertaining to the landlord’s application (the file number as referenced on the cover page of this Decision) is adjourned and is to be heard at a separate hearing.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Are the tenants entitled to compensation under section 51(2) of the Act?
2. Are the tenants entitled to compensation for recovery of the filing fee pursuant to section 72(1) of the Act?

Background and Evidence

The tenant testified that the tenancy commenced on November 15, 2016 and ended when the tenants vacated the rental unit on April 30, 2018. Monthly rent was in the amount of \$2,400.00, and the tenants paid a security deposit of \$1,200.00. A copy of the written tenancy agreement was submitted into evidence by the tenants.

On January 29, 2018, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), with an end of tenancy date of April 1, 2018. However, the tenants moved out on April 30. The Notice, a copy of which was submitted into evidence by the tenants indicated that the landlord or her son were to move into the rental unit.

On or before May 7, 2018, the rental unit was listed for sale. A copy of the listing was submitted into evidence.

The tenant also testified that he had asked the landlord if she was selling the house; the landlord mentioned "multiple times" that she might be selling the rental unit. He also asked the landlord at the start of the tenancy whether she might ever sell the unit and asked this because he wanted to some level of certainty that he and his mother (the co-tenant) would not have to go through the stress of finding a new place to live.

During the tenancy, the landlord also mentioned to the tenants that she might be selling it. Indeed, apparently the idea was canvassed that one of the tenants might purchase the rental unit from the landlord.

Finally, the tenant testified that the landlord brought her realtor with her during the move out inspection.

In response, the landlord testified that there was no conversation with the tenant before they moved out about whether she was going to sell the property. She told them, "no, I'm not going to sell it." However, during the move out inspection, the tenant apparently asked the landlord if she was going to sell it, to which the landlord replied, "yes, because of my [health] circumstances."

The landlord explained that due to her health condition, she was not physically capable of living in the rental unit, which is a 4-level townhouse, with many stairs. The landlord suffered an injury in September 2017, and had surgery—unfortunately, rather

unsuccessful surgery—on her knee on March 23, 2018. Until the landlord undergoes further surgery she is unable to use the stairs, and that is why she explained she ended up putting the rental unit up for sale. The landlord submitted into evidence copies of medical documentation regarding this matter.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenants' application states that they are seeking compensation in an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement, pursuant to section 51(2) of the Act. I note that this section of the Act which provides for 12 times the monthly rent payable came into force on May 17, 2018, and therefore this section as it currently reads does not apply to the tenants' dispute. I explained that to the tenant, who acknowledged and understood my explanation.

Section 51(2) of the Act, as it was before May 17, 2018 and which applies to the tenants' dispute, reads as follows:

51(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.

As such, I will apply this section of the Act, as it was at the time of the Notice being issued, to the tenants' claim.

In this case, the landlord issued a notice to end tenancy under section 49 of the Act on the ground that "a landlord who is an individual may end a tenancy in respect of a rental

unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Based on the oral testimony of the parties and the documentary evidence submitted by the tenant regarding the listing of the rental unit, I do not find that the landlord ended the tenancy in good faith. While the landlord *may* have issued the notice to end the tenancy in good faith on January 29, 2018, she testified that her knee surgery on March 23, 2108, was unsuccessful, putting her into the position of not being able to use stairs. In other words, she did not intend to move into the rental unit because of her injured knee before the tenancy had even ended.

No steps were taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice. Quite the opposite: the landlord took steps to sell the rental unit on the very day that the tenants were moving out, going so far as bringing along her realtor during the move-out inspection. Within days of the tenants vacating the rental unit the property was listed for sale.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation under section 51(2) of the Act (as it then was between the period of January 29, 2018 and April 30, 2018).

While the circumstances of the landlord's injured knee may have prevented her from occupying the rental unit (and I note that no explanation was provided as to why the landlord's son did not, or could not, move into the rental unit), she nevertheless allowed the vacancy to end and whilst steps were being taken to sell the property. I find that the landlord had no intention of occupying the rental before the tenancy ended, and I find that the landlord did not take reasonable steps to accomplish the reason for ending the tenancy.

Given the above, pursuant to section 51(2) of the Act, I grant the tenants a monetary award in the amount of \$4,800.00.

Further, as the tenants are successful in their claim, I grant them a monetary award in the amount of \$100.00 for recovery of the filing fee, pursuant to section 71(2) of the Act.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$4,900.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial 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 Act.

Dated: November 21, 2018

Residential Tenancy Branch