



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application by the landlord/tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order for compensation equal to 12 months rent pursuant to section 51 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord HD and tenant RP appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlords testified that they received the tenant’s dispute notice and materials and based on their testimony I find the landlord properly served in accordance with sections 88 and 89 of the Act. The landlords confirmed they did not provide written materials in evidence.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation of twelve months rent?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement is in evidence. The tenancy commenced on May 1, 2021. Rent was \$1,100.00 per month. The landlord took a security deposit of \$550.00. The tenancy ended on April 30, 2022.

The landlord HD testified that when he purchased the rental unit, he intended to occupy it. The reason he purchased the rental unit was to be closer to his parents. However, after the purchase, he realized that his mother required more care and he decided to move in with his parents. The landlord confirmed that he never resided in the rental unit and that it is currently rented to another renter for \$1,800.00 per month. He stated that he would have rented the rental unit to the tenant, but the tenant never approached him with a request to remain in the unit.

The tenant provided a copy of the Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") and a copy of the Buyer's Notice to Seller for Vacant Possession Form. The tenant also provided a witness statement from an individual who attended at the rental unit after the tenant vacated and inquired about renting the unit. The tenant stated that he vacated the rental unit pursuant to the Two Month Notice and that he believes that the landlord did not comply with the requirements of the Act.

Analysis

In an application by the tenant for compensation under section 51 of the Act, the landlord bears the onus to establish that they used the rental unit for the purpose outlined in the notice to end tenancy for at least 6 months after the landlord takes possession. Specifically, section 51(2) of the Act states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Two Month Notice as well as the Buyer's Notice to Seller for Vacant Possession state that the purpose for ending the tenancy is so the purchaser of the property, the landlord, could occupy the rental unit. The evidence is undisputed that the purchaser landlord never occupied the rental unit and immediately re-rented the rental unit. I further find that it was not the tenant's responsibility to request to remain in the unit. The tenant had received a Two Month Notice, and therefore was required to vacate the rental unit. He could not have known that the landlord was amenable to having the tenant remain in the rental unit.

Section 51(3) allows me to exempt the landlords from the requirement to occupy the rental unit if extenuating circumstances exist that prevent the landlords from accomplishing the stated objective within a reasonable time. I find that the landlords' explanation regarding the mother's health condition does not constitute extenuating circumstances. They did not provide evidence establishing that the mother suffered a marked deterioration in her health condition after the property was purchased that required them to change their plans. Further, no medical evidence was provided to establish the mother's health condition, or her care requirements. I find that section 51(3) of the Act does not apply.

The tenant's application is therefore granted. The tenant is entitled to compensation of 12 months rent, which is equal to \$13,200.00.

As the tenant was successful in his application, he is also entitled to recover the filing fee of \$100.00.

Conclusion

The tenant is granted a monetary order in the amount of \$13,300.00 for compensation and the filing fee. The monetary order must be served on the landlord. The monetary 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 *Residential Tenancy Act*.

Dated: May 28, 2023