



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNDC

### **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 Act for the equivalent of one month rent under section 51(1) applicable when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued. The tenant was also seeking the equivalent of two months rent under section 51(2) and further compensation for damages and losses caused by the landlord's failure to give adequate notice as required under section 49. Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- Was the two-month notice compliant with the Act and served on the tenant in the approved form pursuant to section 49(7) with adequate notice of at least two months effective the day before the day rent is due pursuant to section 49(2) ?

(1) If not, can the tenant establish that the landlord's contravention of the Act resulted in quantifiable damage or losses for which the tenant is entitled to be compensated?

(2) Was the tenant credited with the equivalent of one month compensation pursuant to section 51(1)?

- As the issue of bad faith had been alleged by the tenant, was there an element of bad faith? In particular:

(1) Was there an ulterior motive for ending the tenancy?

(2) Were steps taken by the landlord to accomplish the stated purpose given for ending the tenancy under section 49 within a reasonable period after the effective date of the notice?

The burden of proof is on the tenant in regards to proving that the Landlord's notice did not comply with the Act and that damages and losses were incurred due to the landlord's violation of the Act.

The burden of proof is on the landlord to establish that the notice was issued in good faith and that the rental unit was utilized for the stated purpose

### **Preliminary Matters**

The landlord questioned the jurisdiction and the authority of the Act in regards to this rental on the basis that the cabin was an asset of a resort business that was developed to focus solely on recreational rentals.

The Act does not apply to vacation or travel accommodation. However where a cottage, manufactured home or chalet is rented as a residence to a tenant other than for vacation or travel, the Act would apply.

In this instance, the cabin was rented to the tenant as the tenant's principle domicile. Accordingly, I find that there was a residential tenancy agreement between the parties and that the relationship is therefore regulated by the Act.

## **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was a copy of a hand-written chronology of events and commentary on issues during the tenancy between January 2008 and July 28, 2008. Also submitted into evidence was a copy of a letter from the landlord dated June 16, 2008 advising the tenant that “the cabin” will be converted for use as a “*satellite outlet to our main office*” effective August 1, 2008. An undated copy of a letter of reference from the landlord in regards to the tenant was also in evidence.

The landlord testified that a letter terminating the tenancy in order to convert the cabin to landlord’s use, was issued on June 16, 2008, and although the effective date indicated on the notice was August 1, 2008, the landlord testified that the landlord verbally assured the tenant that the tenant could remain until suitable alternate accommodation was arranged . The landlord testified that it had been determined that the cabin was needed for the caretaker’s use as an alternate office and residence for the caretaker. The landlord testified that this was the intended use that was the basis for the notice and that this was the current use at the present time. The landlord testified that the notice may well have been noncompliant in terms of the amount of notice given and the format used. However, according to the landlord, it was issued in good faith and for the purpose stated. The landlord acknowledged that there was noncompliance in regards to the failure to grant the tenant compensation for the equivalent of one month rent and agreed that this should now be paid under the Act. The landlord stated that there was no intent to violate the Act in this manner, nor in regards to the form and amount of notice given to the tenant. The landlord explained that the owners and management of the resort had not been aware that the Residential Tenancy Act would apply. The landlord stated that, had they realized that this tenancy was governed by the Act, compliance would have been assured.

The tenant testified that the landlord failed to give proper notice and that this made the eviction illegal. The tenant testified that he feels that because the termination of the

tenancy was not lawfully imposed, this would then justify a claim by the tenant for the tenant's moving costs. The tenant conceded that proper notification could have, and likely would have been issued at some point to end the tenancy in any case. However, the tenant pointed out that a notice conforming with the Act would have allowed the tenant more time to find a suitable home, rather than rushing into another less ideal tenancy while under such an abbreviated time constraint. The tenant argued that because of the short time-line, he was compelled to accept a unit that did not offer the same amount of storage that he used to have and therefore he incurred extra storage costs of \$80.00 per month.

In regards to the monetary claim for compensation equivalent of one month rent, under section 51(1) of the Act, the tenant testified that this compensation was supposed to be paid under the Act and is therefore owed.

In regards to the issue of bad faith, the tenant alleged that the landlord terminated the tenancy not for the purpose stated, but with an ulterior motive. The tenant testified that after he received the notice, he observed the landlord showing the unit to some prospective tenants, which the landlord has denied and pointed out that the individual being shown the unit was the landlord's girlfriend. The tenant testified that the landlord is not currently utilizing the cabin as a "satellite office", but as a residence for the caretaker and as a management contact for after-hours inquiries. The tenant's position is that, because the cabin is not being used as an office, this proves that the eviction was not done in good faith and that the tenant is therefore entitled to be paid the equivalent of two months rent under section 51(2) of the Act.

## **Analysis**

### **Damages**

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the

other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

I find that in this case, the tenant has clearly established that there was a breach of the Act by the landlord. However in regards to proving that this contravention of the Act caused tangible damage or loss for the tenant, I find that the tenant's verbal testimony will not suffice to completely satisfy element 2 and element 3 of the test for damages. Although the tenant claimed reimbursement for moving costs and storage expenses, the tenant failed to submit any relevant documentation in evidence to verify these costs. In addition, I find that the moving costs would eventually have to be paid anyway at some point in the future, once the proper notice was issued and the tenancy ended. There is no way to know whether it would have been possible for the tenant to avoid the storage costs had he been allotted adequate time to search for a place given proper notice by the landlord.

Had there been no violation of the Act by the landlord, and had a valid notice issued, I find that on a balance of probabilities the tenant would certainly have saved at least one month storage costs by remaining in the existing cabin for an extra month, which would have been the case with proper notice. Therefore, I find that the tenant is entitled to monetary compensation in the amount of \$80.00 for damages and loss in regards to storage costs.

#### Equivalent of One Month Compensation

Section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord with a Notice to End Tenancy for Landlord Use. Therefore, I find that the tenant is entitled to be paid \$600.00 by the landlord.

#### Compensation Bad Faith and Failure to Use Unit for Purpose Stated

Section 49(6) provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;

- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) **convert the rental unit for use by a caretaker, manager or superintendent of the residential property;**
- (f) **convert the rental unit to a non-residential use.**

(my emphasis)

Section 51(2) of the Act states that in addition to the amount payable under section 51(1), the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

In this instance the landlord's stated intent was to convert the cabin for use of a "*satellite office*" which the tenant has evidently interpreted to be conversion to non-residential use pursuant to (f) above. If this was the case, then the unit was not being utilized precisely for the purpose stated and this could be perceived as an indication of bad faith.

It is interesting to note that, when the "good faith" intent of the landlord is called into question, the burden is then on the landlord to establish that he truly intended to do what was indicated on the Notice to End, and that he is not acting dishonestly nor with an ulterior motive in ending the tenancy.

Both parties testified that there is a main office in the complex that handles the business of the resort and both parties acknowledged that the landlord is the caretaker and that part of his employment is to function as management contact serving residents and customers of the resort after hours. I note that for this purpose, the landlord testified that he is required to conduct a certain amount of administrative work on the premises, specifically in his cabin. I do not find this usage to be inconsistent with the stated purpose proposed in the letter of notice. I find that the term, "satellite office" could feasibly be referring to the present arrangement. Moreover, I find that the issue of bad faith is not supported in light of the fact that, if the landlord's aim was to find a means of validly ending the tenancy, then converting the rental unit for the use of a caretaker is one of the permitted reasons specifically identified in section 49(6) of the Act. The tenant's suggestion that the landlord fabricated the use to fit section 49(6)(f), when he could validly have used 49(6)(e) to accomplish the same end makes little sense.

Accordingly I find that there is nothing to suggest that the landlord was acting in bad faith and I find that the landlord is not subject to section 51(2) of the Act and therefore the tenant is not entitled to compensation under this section of the Act.

### **Conclusion**

Based on the testimony and evidence, I find that the tenant is entitled to compensation in the amount of \$680.00, comprised of \$600.00 representing the equivalent of one month's rent under section 51(1) of the Act and \$80.00 for the cost of storage for one month. This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remaining claims in the tenant's application are dismissed.

September, 29, 2008

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