

## **Decision**

**Dispute Codes:** MNDC, FF

### **Introduction**

This Application for Dispute Resolution by the tenant indicated that the landlord had issued a Two-Month Notice to End Tenancy for Landlord's Use dated April 1, 2008 and that on this basis the tenant vacated the unit, only to realize later that the notice issued by the landlord was incomplete in that it was missing the second page where the landlord's obligations were set out under section 49 of the Act. The tenant discovered that the landlord had an obligation under the Act to confirm that all permits were in place and to pay the tenant the equivalent of one month rent under the Act.

The tenant is seeking a monetary order for compensation under the Act.

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

The tenant is seeking \$603.00 compensation for money owed but not paid pursuant to a Notice under section 49. .

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord issued a valid notice under section 49 of the Act ending the tenancy for landlord use or whether the tenancy was ended in a manner that contravened the Act?
  - If the notice was not compliant with the Act, is the tenant owed any compensation for damage and loss suffered by the tenant due to the landlord's violation of the act?
- Whether or not the equivalent of one month compensation is owed to the tenant under section 49 if applicable.

### **Background and Evidence**

The tenant testified that the had issued a Two-Month Notice to End Tenancy for Landlord's Use dated April 7, 2008 and effective August 1, 2008. The tenant had submitted into evidence a copy of this Notice and this document consisted of one page. I note that this is the first page of two pages and that the second page is missing, that would normally give details about the landlord's reasons for the termination and provide key information about the respective rights and responsibilities of the parties.

The tenant testified that on the basis of this incomplete notice, the tenant vacated the unit at the end of April, 2008, only to realize later that the notice issued by the landlord was not in compliance with the Act in that it was missing the second page where the landlord's obligations were set out regarding a Notice issued under section 49 of the Act. The tenant discovered that the landlord had an obligation under the Act to confirm that all permits were in place for the alleged renovations and was also legally required to pay the tenant the equivalent of one month's rent.

The tenant testified that, although the notice issued by the landlord was not compliant with the Act, the tenant is not seeking any additional damages for moving, other than that which she contends is due under section 51(1). The Tenant has limited the claim to \$603.00, which is the equivalent of one month's rent.

The Landlord testified that he believed that the notice that was issued to the tenant had been complete with the second page attached. The landlord testified that renovations were planned and arranged to commence in August 2008, but the tenant moved out at the end of April 2008. The landlord testified that, because the tenant had moved out early and did so without providing the required written notice under the Act, this imposed a monetary loss onto the landlord.

The tenant acknowledged that the tenant failed to provide written notice but stated that the landlord was aware of the move as of August 15, 2008 and in fact had received a call requesting a reference from the tenant's new landlord. The tenant also refuted the testimony of the landlord regarding the allegation of a financial loss, pointing out that the unit was re-rented at a higher rental rate.

### **Analysis**

Section 49.1(3) of the Act states that a landlord can end a tenancy for landlord's use on a date that is

- (a) not earlier than 2 months after the date the notice is received,
- (b) the day before the day in the month, or in the other period on which the tenancy is base

While I find that the landlord was compliant with the amount of notice, I find that section 49.1(3) of the Act states that the form of the notice must comply with section 52. This provision requires that a notice to end tenancy must state the grounds for ending the tenancy, and, when given by a landlord, be in the approved form.

I find that, because the second page was missing, the notice was not in the approved form and was thereby invalid and therefore the termination of the tenancy was in violation of the Act.

That being said, the tenancy has ended and no monetary damages for wrongful eviction have been requested by the applicant/tenant.

However, section 51 (1) of the Act states that 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. I find that the landlord neglected to pay the required compensation under section 51.

I note that the landlord's losses, even if proven are immaterial to these proceedings as this hearing was convened on the tenant's application. I also must point out that a tenant's violation of section of the Act does not relieve the landlord of the obligation to pay the equivalent of one month's rent as compensation under section 51 of the Act.

In any case, under section 50(1)(a), of the Act a tenant is entitled to give a minimum of 10 days (written), notice and is only required to pay the proportion of rent applicable to the actual days spent in the unit for that month. Moreover, section 50(1)(b) states that an early departure such as this still does not function to negate the tenant's right to be credited with the equivalent of one month's rent under section 51.

Given the above, I find that the landlord has violated section 49 and 51 of the Act and that the tenant is entitled to the equivalent of one-month's rent.

### **Conclusion**

Based on the above facts I find that the Tenant is entitled to a monetary order in the amount of \$653.00 comprised of \$603.00 representing the equivalent of one month's rent and the \$50.00 fee paid by the tenant for this application.

September 22, 2008

---