



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for money owed or compensation for damage or loss under the *Act* and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the landlord by registered mail on April 10, 2009. The landlord confirmed he had received this.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Did the landlord give the tenants Notice to End Tenancy for landlords' use of the property in good faith?
- Has the landlord or close family member moved into the property within a reasonable period of time from the end of the tenancy?
- Is the tenant entitled to seek compensation if the landlord or close family member have not moved into the property?
- Is the tenant entitled to recover his filing fee?

Background and Evidence

This tenancy began on August 01, 1999. The landlord issued the tenants with a Two Month Notice to End Tenancy for Landlords Use of The Property on November 11, 2008. The tenants moved from the property on January 19, 2009.

Since that time the tenant testifies that the landlords have been carrying out some decoration of the property but have failed to move in. The tenants have kept a log of the times a decorator has been into the property between the date they moved out and the date they filed their application. This shows that in a total of 79 days when the property was empty there is a total of 16 days when cosmetic work was being carried out. The tenants are questioning the landlords' position when he gave them the notice to end tenancy if he had any intention of moving into the rental property.

The landlord testifies that he has been living and working outside of Canada for 25 years. It was his intention to return to Canada over the next few years. However, in 2007, while living overseas, the landlord and other close family members were the victims of a car jacking and sustained severe injuries that have resulted in the landlord and his family having to move back to Montreal to undergo hospital treatment. This treatment has continued throughout 2008. The landlord states that he had every intention of moving back to the property and that is why he issued the Notice to End Tenancy to the tenant. The landlord states that due to his injuries he is unable to manage many aspects of daily life and has been unable to travel to Victoria to move back to the property. The landlord states that he was informed by his doctor that he will not be fit to work overseas and that is why he wanted to move back into the rental property. At present the landlord and four members of his family are continuing to live in Montreal in a two bedroom apartment.

The tenant testifies that he was of the understanding that he could live in the rental property until August 2009 when his daughter would have finished her exams. He states that it was unnecessary for his family to have moved out of the property in January disrupting his daughter's education when the landlord did not move in at that time.

The landlord testifies that he was hoping to start working for his company again in the New Year of 2009 and transfer to Victoria. As he remains on permanent disability this has not happened. He confirms that the property remains empty as of today.

The landlord and tenant confirm that the tenant was given one months free rent to compensate him for the two months notice. The tenant also agreed to the landlord withholding his security deposit of \$900.00 plus interest of \$88.32 in partial payment of rent for one of the last two months. Both the landlord and tenant agree that the tenant did not pay the remainder of the outstanding balance for that months rent of \$1,011.68. The tenant states that he bought a washer, dryer and micro wave for the property which he left when he moved out and believes he should be compensated for these items.

Analysis

The Residential Tenancy Act s. 51(2) states that:

(a)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....

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.

I recognise that the landlord has had some mitigating circumstances as to why he has been unable to move into the rental unit as stated in the Notice to End Tenancy. However, the landlord was aware of his medical condition before he gave Notice to the tenant. By the landlords own admission he is unsure when he will be fit to move into the rental unit and so I find that it was premature for him to have given the tenant Notice at that time. I find that

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the tenant is entitled to be compensated an amount that is equivalent to double the monthly rent s. 51(2)(a)

As the tenant admits that he withheld some of the last months rent without permission of the landlord to compensate him for his purchase of household items I find that he owes the landlord rent to the amount of \$1011.98.

As the tenant has been successful in this matter he is entitled to recover his filing fee of \$50.00.

A Monetary Order will be issued for the following:

Double the monthly rent	\$4,000
Less amount outstanding from rent	(-1011.98)
Total amount	\$3,038.02

Conclusion

A Monetary Order in the amount of **\$3,038.02** has been issued to the tenant and a copy of it must be served on the landlord. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: June 04, 2009.

Dispute Resolution Officer