

## **DECISION**

Dispute Codes      CNC O OLC FF

### Preliminary Issues

**Additional Time for Service** - The Male Tenant testified that he applied for dispute resolution via e-mail on May 21, 2009 and that when he did not receive a hearing date by July 27, 2009 he contacted the Residential Tenancy Branch (RTB) and found out his computer firewall was blocking the e-mails being sent to him by the RTB. The Tenant stated that after adjusting his computer he was able to receive the hearing package information which he printed and served to the Landlord on August 1, 2009. The Tenant argued that the Information Officer from the RTB advised him to file an amended application requesting additional time to serve the Landlord with the hearing package.

The Landlord and her Agent appeared at the hearing and were able to provide documentary evidence to both the *Residential Tenancy Branch* and the Tenants by August 20, 2009, twelve days before the hearing, which is well within the required time frames as set out in the *Residential Tenancy Rules of Procedure*.

In consideration of computer technology and firewall restrictions I find that the Tenants acted in a responsible manner by contacting the RTB, serving the Landlord within one day from receiving the hearing package, and by reapplying to request additional time for service. Based on the aforementioned I hereby approve the Tenants' request for additional time for service of the hearing package.

**Amend Reason for Application** – The Tenants confirmed that they did not understand which reason to select when filing their on-line application for dispute resolution and they are not seeking an Order to cancel a notice to end tenancy. The Tenants argued that they are seeking a Monetary Order for compensation under section 51(2)(b) because the Landlord did not use the rental unit for the reasons that they were evicted and to recover the cost of the filing fee from the Landlord, as they have explained in writing on both their original and amended applications.

Based on the clarifications provided I hereby allow the Tenants to amend their application to be for a Monetary Order for double one month's rent and to recover the cost of the filing fee of \$50.00 from the Landlord. The Tenants' application to cancel the notice to end tenancy, other, and to order the Landlord to comply with the Act is withdrawn as these reasons were selected by the Tenant in error.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the Act, served personally to the Landlord by the Male Tenant on August 1, 2009 at the Landlord's residence.

The Landlord, the Landlord's Agent and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 51 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The Female Tenant began her tenancy with the previous homeowner on March 1, 1994 and the Male Tenant moved in on September 1, 2005. The Tenants testified that they

moved out of the rental unit on January 15, 2009 based on a 2 Month Notice to End Tenancy for Landlord's use.

The Tenants claim that the Landlord did not move into the rental unit and instead the Landlord rented the unit to another tenant effective March 1, 2009 for a higher rent.

The Landlord's Agent testified that the Landlord had issued the 2 Month Notice to End Tenancy because she had intended to move into the rental when her current residence sold, until her new home was finished being built. The Agent referred to the Landlord's evidence as proof that the Landlord had listed her primary residence for sale.

The Landlord's Agent stated that the Landlord's primary residence did not sell as quickly as she had thought it would so after the Tenants vacated the rental unit on January 15, 2009 the Landlord paid to renovate the rental unit and entered into a one year lease with a new tenant on March 1, 2009.

The Landlord and her Agent both testified to the fact that the Landlord later sold her primary residence and that the Landlord moved into her new home prior to it's completion. The Landlord argued that it was her intention to move into the rental unit when her primary residence sold until her new home was completed.

### Analysis

It is important to note that in a claim for loss under the *Act*, the party claiming the damage or loss, in this case the Tenants, bears the burden of proof.

Based on the evidence and testimony before me the Tenants' tenancy ended as a result of the Landlord issuing a 2 Month Notice to End Tenancy for Landlord's use, the Landlord did not use the rental unit as stipulated in the notice, and six weeks after the Tenants' tenancy ended the Landlord entered into a 1 year fixed term tenancy with a new tenant at a higher rent than what the original Tenants were paying.

Section 51(2) of the *Residential Tenancy Act* states that 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, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on the above I find that the Tenants have proven their monetary claim for compensation under section 51(2) in the amount of \$1,800.00 (2 x \$900.00 monthly rent).

The Tenants have been successful in their claim and I find that they are entitled to recover the cost of the filing fee from the Landlord.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim and that the Tenants are entitled to recover the filing fee from the Landlord as follows:

Claim payable equal to two months rent (2 x 900.00)	\$1,800.00
Filing fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$1,850.00</b>

### Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$1,850.00. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: September 02, 2009.

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Dispute Resolution Officer