

## **DECISION**

**Dispute Codes:** MNDC and FF

### **Introduction**

This application was brought by the tenant seeking compensation under sections 51(1) and 51(2) of the *Act* pursuant to a Notice to End Tenancy for landlord use served on June 30, 2009. The tenant also sought to and recover the filing fee for this proceeding.

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

This matter requires a decision on whether the tenant is entitled to Monetary Order for compensation under section 51(1) – the last month's rent free, and section 51(2) – failure to use the rental unit for the purpose stated on the notice.

### **Background and Evidence**

This tenancy began on January 15, 2009. Rent was \$1,750 per month and the landlord held security and pet damage deposits which were returned at the end of the tenancy.

During the hearing, the tenant gave evidence that she had been served with a two-month Notice to End Tenancy for landlord use served on June 30, 2009 and setting an end of tenancy date at August 31, 2009. The reason stated on the Notice to End Tenancy was that the landlord required the rental unit for her own use.

The tenant, concerned about trying to find a new rental unit for September 1, 2009, was able to find a new rental unit and gave two weeks' notice that she would be leaving at the end of July.

The landlord, who joined the telephone conference call hearing 35 minutes after it began, acknowledged that she had received and had not returned the rent for July.

The tenant gave further evidence that on driving by the rental unit on or about August 19, 2009, she saw a "for sale" sign on the lawn and submitted the MLS listing into evidence.

The landlord stated that she had moved in to the rental unit which is the upper portion of the rental building in which she lived, but had listed and subsequently sold. She provided a new address at which she said she had resided for three weeks. As I was unable to find the street address she gave while attempting to find the postal code, I have used the landlord's original address trusting that she has registered her forwarding address with Canada Post.

## **Analysis**

Section 51(1) of the *Ac* provides that a tenant who receives a two month notice to end tenancy for landlord use is entitled to receive one month's rent free, and this entitlement remains even if the tenant gives ten day notice under section 50 of the Act.

Therefore, I find that the landlord owes the tenant \$1,750 in return of the July rent because of the notice to end for landlord use.

Section 51(2) of the *Act* provides that if a landlord does not use the rental unit for the purpose stated in the notice to end for at least six months, then the landlord must pay the tenant an amount equivalent to two months' rent.

As the notice stated that the reason to end the tenancy was to permit the landlord or a close family member to use the suite, and as the property was listed for sale almost immediately after the tenant vacated, it is clear that the unit was not used for the purpose stated on the notice.

In fact, the landlord acknowledged that the property has sold and that she had given the notice as vacant possession facilitates a sale. Section 49 of the *Act* make provision for a notice for landlord use to sell the property, but it does require that the landlord have an offer to purchase with conditions removed.

Therefore, in addition to the standard one-month's rent for notice for landlord use under section 51(1), I find that the tenant is entitled to recover an amount equal to two months' rent from the landlord for the breach of section 51(2) of the *Act*.

In consideration of the landlord's difficult circumstances, the tenant agreed to accept two month's rent in settlement of the matter.

Accordingly, I find that the landlord owes the tenant the equivalent of two months' rent,  $2 \times \$1,750 = \$3,500$ .

I further find that the tenant is entitled to recover the filing fee for this proceeding.

## **Conclusion**

The tenant's copy of this decision is accompanied by a Monetary Order for \$3,550, enforceable through the Provincial Court of British Columbia, for service on the landlord.