



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that on November 5, 2009 she personally served the landlord's mother-in-law, at the landlord's residence, with copies of the Application for Dispute Resolution and Notice of Hearing.

On January 29, 2010, the landlord submitted written documentation to the Residential Tenancy Branch (RTB), in response to the Application.

These documents are deemed to have been sufficiently served in accordance with section 89 of the *Act*; however the landlord did not appear at the hearing.

Preliminary Matter

On January 29, 2010, the RTB received a letter from the landlord, requesting an adjournment of this hearing, as the landlord was going to be out of town at the time of the hearing. The tenant was not served with a copy of this request and was unaware of the landlord's request for an adjournment. Rule 6.1 of the Residential Tenancy Branch Rules of Procedure provides an opportunity to reschedule a hearing if the written consent from both the applicant and the respondent is received by the Residential Tenancy Branch at least 3 days before the hearing; however, this did not occur and I determined that the hearing would proceed. I also found that the landlord's submission provided evidence that the landlord had been sufficiently served with Notice of this hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation as provided by section 51 of the *Act*?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy agreement required the tenant to pay monthly rent of \$475.00 which was due on the first day of the month. The tenancy commenced in mid-March 2009. The tenant was told on several occasions that she would have to move out; as the landlord was planning on having family members move into the tenant's rental unit.

On July 19, 2009 the landlord telephoned the tenant and gave her verbal Notice that she must move out within 3 weeks as the landlord's family member was moving into the rental unit. Within several weeks the tenant moved out.

The tenant paid her rent in full.

The tenant is seeking compensation as provided under section 51 of the Act. At the time she was given Notice, the tenant was not aware of her right to receive compensation under the Act. The tenant applied requesting double her monthly rent as compensation; however, the tenant intended to request compensation owed at the time the tenancy ended.

Analysis.

Section 51 of the Act requires a landlord to pay a tenant the equivalent of one month's rent when a tenant is given Notice to end a tenancy under section 49 of the Act. Section 49 of the Act determines that a landlord may end a tenancy to allow a close family member to move into the rental unit.

In the absence of the landlord at this hearing, I find that, on the balance of probabilities, the tenant was given verbal Notice that she must move out of the rental unit within 3 weeks of July 19, 2009 and that this Notice was based upon the landlord's intention to move a close family member into the rental unit. When Notice is given under section 49 of the Act it must comply the section 52 of the Act; which determines the form and content of any Notice to end tenancy.

The landlord did not give the tenant Notice to end her tenancy in the approved form; however, the tenant moved out of the rental unit as the direct result of the verbal Notice given by the landlord. I find that the intention of the landlord would not be altered by the requirement that a written Notice be issued in the approved form, and I find that the verbal Notice issued was sufficient to cause the tenant to vacate as if given Notice in the approved form, under section 49 of the Act.

Therefore, based upon the Notice given by the landlord and the apparent intention of the landlord when Notice was given, I find that the tenant is entitled to compensation in

the sum equivalent to one month's rent, as provided under section 51 of the Act. I find that the landlord achieved the desired outcome through the issuance of a verbal Notice and find that the landlord may not avoid the Act.

I find that the tenant's application has merit and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The balance of the tenant's monetary claim is dismissed without leave to reapply.

Conclusion

I find that the tenant has established a monetary claim in the amount of \$525.00, which is comprised of \$475.00 compensation and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order of **\$525.00**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: March 05, 2010.

Dispute Resolution Officer