

## **DECISION**

Dispute Codes

MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlords by Registered mail on November 09, 2009 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?

### Background and Evidence

This tenancy started on September 01, 2009. Both parties agree that this was a fixed term tenancy due to end in April 2010. The tenants' share of rent for this unit was \$405.00 per month and was due on the first of each month. The tenant shared this basement suite with three other tenants and each tenant had a separate tenancy agreement with the landlords.

The tenant testifies that she received a Two Month Notice to End Tenancy on October 07, 2009. This Notice gave a date to vacate the rental unit on December 10, 2009. The reason given on the Notice was that the rental unit will be occupied by the landlord, the landlords spouse or a

close family member of the landlord or the landlords' spouse. The tenant did not dispute this notice.

The tenant testifies that the other tenants spoke with the landlords and gave them verbal Notice that they would vacate the rental unit on October 31, 2009. The tenant states that she was away at the time but the landlords e-mail indicates that she would be given a few days more to vacate the unit. The tenant claims that she spoke to the landlords on November 01, 2009 and it was agreed that she could move out on November 04, 2009. The tenant claims that on November 02, 2009 the landlords posted a 10 Day Notice to End Tenancy for unpaid rent on her bedroom door.

The landlord's testify that the tenant did not give them written notice to end the tenancy until November 02. The landlords claim that they received an e-mail from the tenants on October 26 stating that they would move out on October 31, 2009 with the exception of this tenant who was away at the time.

The landlords claim that they were advised to give the tenant a 10 Day Notice to End Tenancy as she had not paid rent for November, 2009. The landlord's testify that they agreed that the tenant would only owe them rent for 10 days in November, 2009. The tenant then gave the landlords written Notice on November 02, 2009 and she left the rental unit on November 04, 2009.

As the tenant has moved from the rental unit she has not applied to cancel the 10 Day Notice.

### Analysis

The landlords served the tenant with a Two Month Notice to End Tenancy for the landlords use of the property. Section 51 of the Act states:

#### **Tenant's compensation: section 49 notice**

- 51** (1) A 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.

Section 50 of the Act states:

**Tenant may end tenancy early following notice under certain sections**

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

A notice under this section does not affect the tenant's right to compensation under section 51 of the Act. And by giving the tenants a two Month Notice the landlords are still obligated to pay the tenant the equivalent of one months rent.

In this instance I find the tenant did not give the landlord written notice until November 02, 2009 as stated in the landlords verbal submissions. As the 10 days would have started from this date the earliest the tenant could have ended the tenancy would be November 12, 2009. It is my decision therefore that the tenant owes rent to the landlord for 12 days in November, 2009 and the remainder of the month would be the compensation she would be entitled to for the Two Month Notice pursuant to sections 50 and 51 of the Act.

As the tenant has been partially successful with her claim I find she is entitled to recover the \$50.00 filing fee from the landlords pursuant to section 72(1) of the *Act*.

The tenant is entitled to a Monetary Order against the landlords for the following amount:

Compensation for the Two Month Notice	\$405.00
Less 12 days credited for the 10 day notice	(-\$162.00)
Total amount due to the landlords	\$293.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$293.00** pursuant to section 67 of the *Act*. The order must be served on the respondents 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: March 09, 2010.

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Dispute Resolution Officer