

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started in November 2008 and ended on November 10, 2009 when the Tenants moved out. During the last three months of the tenancy rent was \$2,700.00 per month payable in advance on the 1st day of each month.

On September 15, 2009, the Landlords served the Tenants with a 2 Month Notice to End Tenancy for Landlords' Use of Property dated September 15, 2009. The Notice had an effective date of December 31, 2009 and the ground indicated on it was that "the Landlord has all the necessary permits and approvals required by law and intends in good faith to demolish the rental unit or renovate or repair it in a manner that requires the rental unit to be vacant."

The Tenants gave the Landlords their written notice on October 31, 2009 that they were ending the tenancy on November 10, 2009. The Landlords admit that they did not pay the Tenants compensation for their last month's rent as they argue that because the Tenants moved out part way through November 2009 they were only entitled to receive their last month's rent free.

Analysis

Section 51 of the Act states that a Tenant who receives a 2 Month Notice to End Tenancy is entitled to withhold their rent for the last month of the tenancy or if the amount has been paid, the Landlord must refund the Tenant's rent payment.

Section 50 of the Act states that a Tenant who receives a 2 Month Notice to End Tenancy may end the tenancy earlier by giving the Landlord 10 day's notice in writing. If a Tenant ends the tenancy earlier, the Tenant is entitled to receive compensation equivalent to one month's rent but must pay the Landlord the proportion of the rent that is due to the effective date of the Tenant's notice.

There is nothing in section 50 or 51 of the Act that requires a Tenant to give a Landlord one clear month's written notice but rather it states that a Tenant may end the tenancy early by giving 10 day's notice *at any time prior to the effective date of the Notice*. Furthermore, there is nothing in section 50 or 51 that restricts a Tenant to only getting free rent and prohibits them from claiming compensation if they give notice part way through their last month of the tenancy. On the other hand, s. 50(3) states that a Tenant's 10 day notice does not affect their right to compensation under s. 51.

Consequently, I find that the Tenants are entitled to compensation of \$1,800.00 representing rent of \$2,700.00 for the month of November 2009 less the amount of \$900.00 for rent for the period November 1 – 10, 2009. I also find that the Tenants are entitled to recover the \$50.00 filing fee they paid for this proceeding.

Conclusion

A Monetary Order in the amount of **\$1,850.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: March 29, 2010.

Dispute Resolution Officer