Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Interim Decision

Dispute Codes: MNDC, FF

Introduction / Background / Evidence

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties attended.

Included in the landlord's evidence is a copy of the decision involving these same parties, dated September 29, 2010. The hearing on that same date was convened in response to the landlord's application for an order of possession and recovery of the filing fee. The tenant did not attend, however, the dispute resolution officer found that he had been properly served with the landlord's hearing package. Pursuant to issuance of a 2 month notice to end tenancy for landlord's use of property, an order of possession was issued in favour of the landlord; the dispute resolution officer was satisfied that the purchaser had asked the landlord in writing to give notice to end the tenancy, as the purchaser's intent was to occupy the unit. While a finding was also made that the landlord was entitled to recover the filing fee by way of withholding $50.00 from the tenant's security deposit, the landlord did not apparently do so.

At the present hearing, the tenant claimed that he had only become aware of the above decision when the landlord provided a copy as evidence for this hearing. He also stated that he received his copy of the decision less than 5 days prior to the hearing.

Further, there was some question around the nature of advice provided to the tenant by staff at the Residential Tenancy Branch (the "Branch") in regard to who should be named as a respondent in his application - the landlord or the purchaser. In his application only the landlord is named as a respondent. In this regard, section 51 of the Act provides, in part, as follows:

> 51(2) In addition to the amount payable under subsection (1), if
>
> (a) 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

(b) 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. **[emphasis added]**

The tenant takes the position that the unit has not been used for the purpose stated in the 2 month notice.

Arising from all of the above, I find that the purchaser should also have been named as a respondent in this action. As the tenant appears to have been given incorrect direction from the Branch, I find it appropriate to grant an adjournment in order to give the tenant an opportunity to amend his application naming the purchaser as a respondent, and I order that a time be set aside for a new hearing to take place.

The Branch will send copies of a notice of hearing under separate cover to the tenant. The tenant is ordered to serve on the respondents copies of his amended application together with the notice of hearing and any evidence on which he intends to rely. The respondents should supply their evidence to each other, to the tenant and to the Branch in accordance with Rule 4 of the Branch Rules of Procedure.

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Rules of Procedure, Fact Sheets, forms and more can be accessed via the website:

www.rto.gov.bc.ca

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*.

DATE: April 13, 2011

_____

Residential Tenancy Branch