

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application filed by the Tenant for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing and gave testimony.

At the beginning of the hearing it was learned that both parties failed to serve the other with their evidence packages. The Residential Tenancy Branch Rules of Procedure 11.5 (b) states, the acceptance of the evidence would prejudice the other party. On this basis, I find that documentary evidence submitted by both parties will be excluded. The hearing shall continue with direct testimony from both parties.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation?

Background and Evidence

Both parties agree that a 2 month notice to end tenancy was served by the Landlord on February 17, 2011 and the Tenant vacated the rental unit on March 31, 2011. The monthly rent at the end of tenancy was for \$1,100.00 per month.

The Tenant states that the reason given on the notice dated February 17, 2011 to be effective April 30, 2011 states that, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Tenant states that he complied with this notice and discovered on the date that he returned the keys to the Landlord that both power and water were terminated on the same day. The Tenant states that the house was vacant and unoccupied as of August 6, 2011. The Tenant further states that the house was demolished on August 6, 2011. The Tenant is seeking compensation as noted on the notice equal to two months rent for \$2,200.00 for not using the house for the stated purpose of the notice. The Landlord disputes this claiming that he was unaware of the compensation under the Act. The Landlord further states that the house was not safe and that he was complying with a city government order that he received from the city of Richmond stating that the house

was unsafe and required extensive repairs. The Tenant disputes this stating that the house was in excellent condition when he vacated the rental. The Tenant states that the property was a duplex and that there were separate units for each.

Analysis

Both parties attended the hearing by conference call. The Tenant gave undisputed direct testimony. The Landlord gave direct testimony with the assistance of his translator, Y.M.J.

I accept the Tenant's undisputed testimony and I find that the Tenant was served with the 2 month notice to end tenancy dated February 17, 2011 for Landlord's use with the stated reason as noted above. The Landlord did not dispute the Tenant's claim the reason that was selected for ending the tenancy or that the rental was vacant and unoccupied. Section 51 (2) of the Residential Tenancy 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

I find based upon the undisputed direct testimony of the Tenant that he has established his claim under section 51. The Tenant is entitled to compensation for \$2,200.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. I grant the Tenant a monetary order under section 67 for the balance due of \$2,250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$2,250.00.

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: November 15, 2011.

Residential Tenancy Branch