

## **Decision**

### **Dispute Codes:**

MNDC

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for damage or loss under the Act for the equivalent of one month rent under section 51(1) applicable when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued. The tenant was also seeking the equivalent of two months rent under section 51(2) of the Act.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether the landlord ended the tenancy for landlord's use and if so:

- (1) Was the tenant credited with the equivalent of one month compensation pursuant to section 51(1)?
- (1) Is the tenant entitled to the equivalent of two months compensation under section 51(2)?

The burden of proof is on the landlord to establish that the tenant was paid one-month compensation and that the rental unit was utilized for the specific purpose that was stated on the Notice within a reasonable period.

### **Background and Evidence**

The tenancy began in August 2008. The rent was \$1,400.00 and a security deposit of \$700.00 was paid. Both parties agreed that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use dated January 8, 2012 that indicated the landlord or a close family member would be residing in the rental unit. The parties did not dispute that the Notice was effective April 1, 2012, and that in January 2012, after receiving the Notice, the tenant gave 10-days Notice to vacate by February 1 2012. The tenant actually moved out on February 2, 2012.

The landlord acknowledged that the tenant was not refunded the equivalent of one-month rent as required under the Act. The landlord stated that this was because the tenant remained in the unit beyond the date given in the tenant's Notice to Vacate. It

was the landlord's position that, because the tenant was still in the unit on February 2, 2012, rent would have been owed for February.

The tenant argued that they are entitled to compensation of \$1,400.00 under the Act because a Two Month Notice to End Tenancy for Landlord's Use was issued.

The tenant testified that, although the landlord had issued the Two Month Notice to End Tenancy for Landlord's Use giving as the reason that the landlord or a close family member was going to move in, the landlord failed to utilize the rental unit for the purpose stated in the Notice. The tenant testified that the landlord demolished the rental unit instead of moving in. For this reason, the tenant believes that the landlord is obligated under the Act to compensate the tenant the equivalent of two months rent in the amount of \$2,800.00.

The landlord acknowledged that the family member(s) did not move into the unit, but stated that this was because the home was not fit for habitation. The landlord believes that it would be unfair to be forced to compensate the tenant in the amount of \$2,800.00 under these circumstances. The landlord felt that there should be a compromise. The tenant did not agree.

### **Analysis**

#### **Equivalent of One Month Compensation**

Section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord with a Notice to End Tenancy for Landlord Use. Therefore, I find that the tenant is entitled to be paid \$1,400.00 by the landlord.

#### **Compensation For Landlord's Failure to Use Unit for Purpose Stated**

Section 49(3) provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends to occupy the rental unit.

Section 51(2) of the Act states that in addition to the one month compensation payable under section 51(1), the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if 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 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.

In this instance the landlord's stated intent was to reside in the unit or have a close family member reside in the rental unit. Given this fact, I find that the landlord's choice

to demolish the rental unit instead of moving in to occupy it, supports the tenant's claim that the property was not being used for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use .

Accordingly, I find that under the Act the tenant must be paid \$2,800.00 by the landlord.

In regard to issue of the tenant giving Notice to vacate the rental unit prior to the effective date of the landlord's Two-Month Notice, I find that section 50 of the Act states the following:

*(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*

*(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.*

*(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.*

*(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].*

*(my emphasis)*

In this instance, the tenant left on February 2, 2012 and did not pay pro-rated rent owed for the two days in February, during which the tenant was residing in the rental unit. I find that the tenant would therefore owe the landlord \$92.05 in rent.

Finally, I find that, in returning the tenant's security deposit, the landlord failed to pay the tenant \$4.39 in deposit interest that is specified under the Act and Regulations.

## **Conclusion**

Based on the testimony and evidence, I find that the tenant is entitled to compensation in the amount of \$4,254.39, comprised of \$1,400.00 representing the equivalent of one month's rent under section 51(1) of the Act \$2,800.00 for the equivalent of double one month's rent under section 51(2) of the Act, \$4.39 interest under section 38 of the Act and the \$50.00 cost of filing the Application. I find that the tenant's monetary award

must be reduced by \$92.05 to compensate the landlord for the pro-rated rent owed for two days in February 2012 under section 50(1)(b), leaving \$4,162.34 still owed to the tenant.

I hereby issue a monetary order in the amount of \$4,162.34 in favour of the tenant. This Order is final and binding and must be served on the landlord in person or by registered mail. If unpaid, it may be filed in the Provincial Court (Small Claims) 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: May 16, 2012.

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Residential Tenancy Branch