



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application filed April 25, 2013: O

Landlords' application filed May 6, 2013: MNR; MNSD; FF

### **Introduction**

This Hearing was scheduled to consider cross applications. The Tenants seek "other" orders.

The Landlords seek a monetary award for unpaid rent; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Tenants stated that they did not serve the Landlords with their Notice of Hearing documents because they were not going to go ahead with their Application for Dispute Resolution. Therefore, I find that the Tenants have withdrawn their Application.

The Tenants testified that they served the Landlords with their documentary evidence by leaving the documents with one of the Landlords at their residence. The Landlords acknowledged receipt of the Tenants' documentary evidence.

The Landlords testified that they served the Tenants with their Notice of Hearing documents and copies of their documentary evidence, by hand delivering the documents to the male Tenant at his place of work on May 7, 2013, and by hand delivering the documents to the female Tenant at the Tenants' residence on May 7, 2013. The Tenants acknowledged being served in this fashion.

### **Issues to be Decided**

- Are the Landlords entitled to a monetary award for unpaid rent for April, 2013?
- May the Landlords apply the security deposit against their monetary award?

### **Background and Evidence**

The parties each provided a copy of the tenancy agreement in evidence. This was a fixed term tenancy which began on August 1, 2012, and was to end on July 31, 2013. Monthly rent was \$1,700.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$850.00 at the beginning of the tenancy. There were no Condition Inspection Reports completed that comply with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy.

On February 28, 2013, the Landlords sent the Tenants a registered letter stating that they were going to be breaking the lease and taking possession of the rental unit on May 1, 2013. The Landlords discovered that this was not a valid notice to end the tenancy.

On March 31, 2013, the Tenants received a Two Month Notice to End Tenancy for Landlords' Use, effective June 1, 2013. The Tenants accepted this Notice. On April 11, 2013, the Tenants provided the Landlords with written notice, by registered mail, that they would be vacating the rental unit by April 30, 2013, pursuant to the provisions of Section 50 of the Act. This written notice also provided the Landlords with the Tenants' forwarding address and advised the Landlords of the provisions of Section 51 of the Act (the equivalent of one month's rent in compensation). The Tenants stated that the Landlords received the Tenant's written notice on April 15, 2013. The Landlords stated that they received it on April 21, 2013.

The Tenants stated that they did not pay rent for the month of April, 2013, pursuant to the provisions of Section 51 of the Act.

The Landlords submitted that the Two Month Notice to End Tenancy was not a valid notice because they could not end the tenancy for their own use before the end of the term. The Landlords stated that they withdrew the Notice and expected the Tenants to pay rent for the month of April, 2013.

The Tenants found new rental accommodation and started moving into their new home on April 15, 2013. The Tenants testified that it was their intent to complete the cleaning process at the rental unit and move some remaining items on April 29, 2013. They stated that they had planned for a housecleaner and landscaper to attend at the rental unit.

The Landlords testified that on April 18, 2013, a neighbour told them that the Tenants had moved out of the rental unit. The Landlords stated that they posted a 24 hour Notice to do an inspection on the Tenant's door on April 24, 2013. The Tenants testified

that the Landlord gave the 24 hour Notice to the male Tenant at his work place on April 25, 2013.

The Landlords testified that they deemed the rental unit abandoned on April 26, 2013.

The Tenants stated that they did not abandon the rental unit. They submitted that they had given the Landlords notice that they would be moving out by April 30, 2013, and that they had neighbours watching the rental unit. The Tenants stated that they had discussions with the male Landlord about returning the keys and that they had arranged for a landscaper and housecleaner to attend at the rental unit on April 29, 2013.

On April 26, 2013, the Landlords served the male Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent for April, 2013. The male Tenant called the male Landlord and tried to arrange a meeting at the rental unit on April 29, 2013, for the purposes of doing the final walk through and handing over the keys. The Tenants testified that the male Landlord replied that the Tenants should not show up at the rental unit because the Landlord had deemed it abandoned and they would be charged with trespassing. Therefore, the Tenants did not return to do the final clean-up. The Tenants stated that their remaining personal property (cleaning supplies and door mats) was not returned to them.

### **Analysis**

#### **Regarding the Landlords' Application:**

Based on the testimony of both parties, I find that the Notice to End Tenancy for Landlords' Use is a valid Notice and that it complies with the requirements of Section 52 of the Act. The Landlord submitted that they withdrew the Notice; however, I explained to the parties that a notice to end a tenancy cannot be unilaterally withdrawn by either party. Consent must be obtained from the receiver of the notice to end tenancy before the notice can be withdrawn. The reason for this is that the receiver of the notice, once accepted, relies on the notice. For example:

1. In this case, the Tenants accepted the Notice and found other accommodation. They signed a new tenancy agreement and paid a security deposit to their new landlord. If the Landlords were allowed to unilaterally withdraw the Notice, then the Tenants would be in a position where they might lose the deposit and have to pay damages to their new landlord.
2. Alternatively, if a landlord receives a valid notice to end the tenancy from a tenant, the landlord would start looking for new occupants and might enter into a new tenancy agreement. If the tenant was allowed to unilaterally withdraw the

notice, then the landlord would be in the position of having two tenants for the same rental unit.

Section 51 of the Act provides that a tenant who receives a notice to end tenancy under Section 49 of the Act is entitled to compensation in the equivalent of one month's rent, and may withhold last month's rent, which is deemed to be paid to the landlord. Therefore, I find that the Landlords are not entitled to a monetary award for unpaid rent for the month of April, 2013.

The Landlords have not been provided a monetary award, and therefore I order that they return the security deposit to the Tenants forthwith. The Tenants are provided with a Monetary Order in the amount of \$850.00.

The Landlords have not been successful in their application and I find that they are not entitled to recover the cost of the filing fee from the Tenants.

Copies of Sections 49, 50, 51 and 52 of the Act accompany this Decision.

### **Conclusion**

The Landlords' application is dismissed without leave to re-apply.

I hereby provide the Tenants with a Monetary Order in the amount of **\$850.00**, representing return of the security deposit, for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (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: August 01, 2013

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Residential Tenancy Branch

**"close family member"** means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

### **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
  - (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*].

### **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.

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.