



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

The tenant and the tenant's daughter appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant and his daughter were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The tenant and his daughter testified that the Notice of Hearing and evidence was served on the landlord by registered mail on May 26, 2013. The landlord provided a registered mail tracking number in evidence and confirmed that the name and address matched the name of the landlord and the address of the landlord. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The tenant and his daughter testified that the package was not returned to them. I find the landlord was duly served on the fifth day after mailing, in accordance with the *Act*, which in the matter before me would be May 31, 2013.

Preliminary and Procedural Matter

The tenant withdrew his application for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement as the tenant vacated the rental unit on July 31, 2012. As a result, I will not consider that portion of the tenant's original application for dispute resolution.

Issues to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement, and if so, in what amount?

Background and Evidence

The tenant testified that a verbal, month to month tenancy agreement began on November 1, 2010 and that he was occupying the rental unit prior to the landlord purchasing the home during his tenancy. Monthly rent of \$500.00 was due on the first day of each month. The tenant did not pay a security deposit or pet damage deposit.

The tenant submitted a copy of a letter received from the landlord dated June 15, 2012. In that letter it reads, in part:

“...I (name of landlord) the new owner of the house at (address where rental unit is located) am giving you (name of tenant) two months notice to vacate as I am doing changes to the house and the space you are currently occupying...”

[reproduced as written]

The tenant testified that he relied on this letter from the landlord as a 2 Month Notice To End a Tenancy for Landlord's Use of Property (the “2 Month Notice”) under the *Act*. The June 15, 2012 letter from the landlord did not include an effective vacancy date. The tenant stated that he was advised verbally by the landlord that the landlord wanted him to vacate the rental unit by August 15, 2012, although rent was due on the first of the month.

The tenant stated that the landlord also advised him that she expected half of a month's rent in the amount of \$250.00 to compensate the landlord for rent between August 1, 2012 and August 15, 2012. The tenant testified that he paid the landlord \$250.00 for August 1-15, 2012 rent, however, was unable to find a new rental unit for August 15, 2012.

On July 20, 2012, the tenant stated that he verbally advised the landlord in writing that he would be vacating the rental unit on July 31, 2012. The tenant confirmed that he did not provide notice in writing to the landlord that he would be vacating prior to the date requested by the landlord.

The tenant is seeking the reimbursement of the \$250.00 rent he paid for August 1-15, 2012, although he had already vacated the rental unit. The tenant is also seeking

\$600.00 in compensation for his lodging expenses for August 1-31, 2012. The tenant indicates in his application that he only realized at a later date that he was entitled to compensation under the *Act* due to the landlord issuing him a letter giving him two months to vacate the rental unit.

The tenants submitted in evidence a copy of the June 15, 2012 letter from the landlord requesting the tenant vacate the rental unit in two months, a photocopy of a receipt made out to the tenant in the amount of \$500.00 dated June 1, 2012 for rent as supporting evidence of the tenancy, and copies of email correspondence between the tenant and the landlord. All relevant evidence has been considered in this Decision.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for compensation – The tenant has claimed a total of \$850.00 comprised of the \$250.00 paid to the landlord for August 1-15, 2012 rent, plus \$600.00 for the tenant's lodging between August 1-31, 2012, having vacated the rental unit on July 31, 2012 based on the June 15, 2012 letter received from the landlord which the tenant relied upon as a 2 Month Notice under the *Act*.

I find that the tenant's relying upon the June 15, 2012 letter from the landlord to constitute a 2 Month Notice under the *Act*, to be reasonable. **I find** that the landlord failed to use the approved form as required by section 52 of the *Act*, when issuing a 2 Month Notice under section 49 of the *Act*. As a result of the above, I will refer to the June 15, 2012 letter issued by the landlord as the 2 Month Notice for the duration of this Decision.

The tenant did not dispute the 2 Month Notice issued on June 15, 2012, likely because the landlord failed to use the approved form which includes instructions on how to dispute the 2 Month Notice. Therefore, **I caution** the landlord to comply with the *Act* in the future when issuing a 2 Month Notice under section 49 of the *Act*, including using the approved form under the *Act*.

I find the effective date of the 2 Month Notice, would have automatically corrected under the *Act* to August 31, 2012, versus the August 15, 2012 date provided verbally by the landlord. Section 51(1) of the *Act* 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**.

[emphasis added]

Based on the above, **I find** the landlord owes the tenant **\$500.00** in compensation under the *Act*, which is the equivalent of one month's rent, having issued what the tenant relied upon as a 2 Month Notice under the *Act*. I do not grant the tenant \$600.00 as claimed, as it was the tenant's choice to pay a higher amount for lodging for August 2012 than he was paying for rent at that time as his monthly rent was \$500.00 per month.

Tenant's notice to end the tenancy early – The tenant testified that on July 20, 2012 he advised the landlord verbally that he would be vacating the rental unit on July 31, 2012, however, failed to notify the landlord in writing. Section 50 of the *Act* states:

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.

[emphasis added]

Based on the above, **I find** the tenant did not provide at least 10 days' written notice required by section 50 of the *Act*, and as a result, did not end the tenancy earlier than the corrected effective date of what the tenant relied upon as a 2 Month Notice issued by the landlord, August 31, 2013. Therefore, **I dismiss** the tenant's application for the return of his \$250.00 rent paid for August 1-15, 2013.

I find that the tenant has established a total monetary claim of **\$500.00** consisting of compensation for equivalent of one month's rent pursuant to section 51 of the *Act*, given

that the tenant's reasonable presumption that the landlord had issued a 2 Month Notice under the *Act*. **I grant** the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$500.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$500.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord to comply with the *Act* in the future when issuing a 2 Month Notice under section 49 of the *Act*, including using the approved form under the *Act*.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 27, 2013

Residential Tenancy Branch

