



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

During the hearing the representative of the landlord's former agent requested that the application be amended to reflect the deletion of the agent in the *style of cause* for the landlord. The tenant acceded to this request and the application and *style of cause* are hereby so amended.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on November 1, 2010. Monthly rent of \$1,195.00 was due and payable on the first day of each month, and a security deposit of \$597.50 was collected.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated September 24, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is November 30, 2012. The reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, the tenant did not dispute the notice and she vacated the unit by November 30, 2012.

Pursuant to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**, the tenant received "the equivalent of one month's rent payable under the tenancy agreement," and the tenant's security deposit was repaid in full.

In her application the tenant alleges that after she vacated, the unit was not used for the purpose identified on the landlord's 2 month notice. Specifically, she alleges that the unit was re-rented to tenants who are not family members of the landlord or the landlord's spouse, and at an increased monthly rent of \$1,400.00. In the result, pursuant to section 51(2) of the Act, the tenant seeks compensation in "an amount that is the equivalent of double the monthly rent payable under the tenancy agreement."

The landlord testified that while his parents were to move into the unit, "things change." He testified that the unit was actually too small for his parents and they now presently reside in the basement suite of his own personal residence, which is approximately twice the size of the subject rental unit. Further, the landlord testified that the subject unit was re-rented effective on or about February 1, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the aspects of the tenant's application and my findings around each are set out below.

\$2,390.00: *(2 x \$1,195.00) the equivalent of double the monthly rent.*

Section 51(2) of the Act specifically provides 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.

Residential Tenancy Policy Guideline # 2 speaks to the “Good Faith Requirement when Ending a Tenancy,” and provides in part:

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intended to do what they said on the Notice to End Tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

I find that steps were not taken to accomplish the stated purpose for ending the tenancy as identified on the landlord’s 2 month notice, and that the unit was re-rented approximately 2 months after the end of tenancy at a higher monthly rent. Further, I find that the landlord has failed to meet the burden of proving “good faith intent” in ending the tenancy. In the result, I find that the tenant has established entitlement to the full amount claimed.

\$13.00: *hydro connection in new residence;*

\$21.60: *October Telus bill arising from search for new residence;*

\$63.60: *November Telus bill arising from search for new residence;*

\$82.35: *December Telus bill arising from search for new residence.*

Further to the tenant’s entitlement(s) as set out in section 51 of the Act, I find there is no provision for awarding costs associated with finding a new residence or getting established in a new residence. This aspect of the application is therefore hereby dismissed.

Conclusion

The landlord is hereby **ORDERED** to pay the tenant **\$2,390.00**, and pursuant to section 67 of the Act I hereby issue a **monetary order** in favour of the tenant to that effect. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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 23, 2013

Residential Tenancy Branch

