



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, OPL, FF

Introduction

This hearing was convened in response to cross applications. The tenant applied for a Monetary Order pursuant to Section 51 (1) and (2) of the *Residential Tenancy Act* (the Act), and recover the filing fee. The landlord applied for an Order of Possession; however they withdrew their application as it was not necessary. As a result, the landlord's application is preliminarily withdrawn and **dismissed**.

Both parties attended the hearing and each acknowledged receiving the evidence of the other. The parties gave testimony and were provided the opportunity to make relevant submissions, present witnesses, and to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started July 01, 2012 and ended May 31, 2013. The rent payable under the tenancy agreement was \$850.00 per month. The undisputed evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated February 25, 2013 for the reason / purpose the landlord or the landlord's spouse or a close family member of the landlord or landlord's spouse – with a stated effective date of April 30, 2013. The parties dispute the actual date of the Notice. The tenant provided an affirmed witness whom testified the Notice was not posted to the tenant's door until *after* March 02, 2013 as it was not there on March 02, 2013. Regardless, the tenant did not dispute the Notice, the landlord did not retract the Notice, and the tenant ultimately acted on the landlord's Notice and vacated the rental unit. In March 2013 the tenant requested the landlord extend the effective date of the

landlord's possession of the unit, which the parties agreed by way of a written agreement to end the tenancy May 31, 2013.

The landlord testified that the tenant did not vacate the unit in strict accordance with the Notice; but rather, the written agreement to end the tenancy, therefore did not provide the tenant with the compensation as prescribed by Section 51(1) of the Act.

The landlord further testified they placed the rental unit for sale in mid May 2013 and the property was sold August 16, 2013.

Analysis

I find the evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use. What is relevant is that the landlord notified the tenant they wanted to end the tenancy for their stated own use and gave the tenant the prescribed Notice to End. It is irrelevant whether the effective date of the Notice is the end of April or May 2013. Following the issuance of the Notice the parties agreed that the tenancy could / would end May 31, 2013. I find the tenant did not dispute the Notice and ultimately vacated in accordance with the landlord's wishes to retake possession of the unit for their stated purpose.

The tenant has claimed compensation under Section 51(1) and (2) of the Act which provides as follows:

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.

(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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 the undisputed relevant evidence is that the landlord did not compensate the tenant for giving them a 2 Month Notice and did not take steps to occupy the unit for

themselves, or their spouse, or for a close family member or a close family member of their spouse, within a reasonable period after the effective date of the Notice – whether the end of April or May 2013. Rather the landlord sold the rental unit August 16, 2013.

As a result of all the above, I find the tenant has established an entitlement under Section 51(1) in the prescribed amount of one month's rent under the tenancy agreement, or **\$850.00**.

I further find the tenant has established an entitlement under and 51(2) of the Act in the prescribed amount equivalent *of double* the monthly rent payable under the tenancy agreement in the aggregate of **\$1700.00**. As the tenant was successful in their claim they are entitled to recover their filing fee of \$50.00, for a sum award of **\$2600.00**.

Conclusion

The landlord's application is withdrawn and effectively **dismissed**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$2600.00**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 09, 2013



Residential Tenancy Branch

RTB-136

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca

Residential Tenancy Branch

#RTB-136 (2011/07)

