



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an application by the tenant for a monetary order for an amount equivalent to 2 month's rent. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that on or about July 22, 2012, the landlord served on the tenant a 2 month notice to end tenancy (the "Notice") which indicated that the landlord intended to use the unit, which is located on the lower floor of the home in which the landlord resides, to house a close family member.

On February 18, 2013, the parties were in a Dispute Resolution Hearing (the "February Hearing") which resulted in a decision awarding the tenant his security deposit and compensation due him under section 51 of the Act.

The tenant claimed that the landlord did not use the rental unit for the purpose stated on the Notice and seeks compensation equivalent to 2 months' rent pursuant to section 51(2) of the Act:

#### **51. 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.

- 51(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.
- 51(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that section, the landlord must refund that amount.
- 51(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.

The tenant provided a witness, D.D., who acted as his advocate in the February Hearing. D.D. testified that during the February Hearing, the landlord testified that he had rented the unit to someone else but that the unit was empty at the time of the hearing. D.D. further testified that the arbitrator at the February Hearing advised the landlord that if had re-rented the unit to someone else, he would owe the tenant compensation equivalent to 2 months' rent, at which point the landlord advised that a family member had moved into the unit. D.D. also provided a copy of her notes which were made at the time of the hearing and indicated that the landlord had said at the hearing, "supposed moved out for Oct 1 Moved Out Oct 10 had to rent place from Nov 1." [reproduced as written] D.D.'s notes also show that the landlord stated that "reason that evicted was bc too many occupants." [reproduced as written]

The tenant provided a copy of an advertisement (the "Advertisement") which he testified he found on the wall of a local laundromat on February 17. The single page of paper was dated February 17 and stated that the unit was available for rent from February 15. On the bottom of the page, the landlord's telephone number was written vertically a number of times allowing readers to tear off a single copy of the number to bring with them. It appears that 3 of the copies of the phone number are missing.

The landlord denied that he had re-rented the unit to another party and stated that within one week of the tenant having moved out of the unit, his wife's parents had moved into the unit. The landlord provided copies of airline itineraries showing that his

parents-in-law had travelled back and forth from India a number of times. He testified that prior to living in the rental unit, his parents-in-law had lived upstairs with him. The landlord entered into evidence photographs of his parents in various rooms of the unit.

The landlord acknowledged that the reason he evicted the tenant was because the tenant had too many occupants living in the rental unit.

The landlord called his sister-in-law, H.K., as a witness. H.K. testified that her parents moved into the rental unit within 1 week of the time the tenant moved out. She further testified that she is the person who wrote the advertisement found in the laundromat, but that she wrote it in 2011 and it was the advertisement to which the tenant responded when he first asked about moving into the rental unit.

### Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. This means that the tenant must not persuade me beyond a reasonable doubt, but only that it is more likely than not that his claim is justified.

After having reviewed the testimony and evidence of the landlord, I find that the tenant's evidence outweighs that of the landlord. I prefer the tenants' evidence over the landlord's for a number of reasons.

First, the landlord acknowledged that the reason he evicted the tenant was because the tenant had too many occupants in the rental unit. This is inconsistent with the Notice, which purports to end the tenancy because a close family member will reside in the unit.

During the February Hearing, D.D. took careful notes as she knew she would need to cross-examine the landlord on his evidence. I accept that her notes, made at the time of the hearing, are accurate representations of what the landlord stated at the February Hearing. Although the landlord denied having said that he re-rented the unit, I find it more likely than not that he not only said that he re-rented the unit, but that he was unable to do so until November. This directly contradicts the landlord's testimony at the present hearing in which he stated that his parents-in-law moved into the unit in October.

As in the February Hearing the landlord was attempting to defend a claim for the return of the security deposit, it makes sense that he would identify problems renting the unit as he may have believed that this would lead the arbitrator to not order the return of the security deposit to the tenant. I do not find the landlord or his witness to be credible on this point.

The Advertisement is either a newly written advertisement or is the same one to which the tenant responded 2 years ago. If it is 2 years old, it either survived 2 years in the laundromat without having been defaced or the numbers taken off or the tenant saved the paper, relatively undamaged. I find it unlikely that the advertisement is the same advertisement. Given the level of activity at most laundromats, I find it highly unlikely that any advertisement could survive 2 years without having been defaced or without at the very least having the telephone numbers at the bottom torn off. I also find it unlikely that the tenant saved the advertisement for 2 years. There would have been no reason to do so as he could not have anticipated that the landlord would eventually try to evict him in order to move a family member into the rental unit. I do not find either the landlord or his witness to be credible on this point.

While the landlord has provided photographs of his parents-in-law in the rental unit, I find it likely that the landlord merely gained access to the rental unit long enough to allow him to take photographs and that his parents-in-law have never lived in the unit since the tenancy ended.

For these reasons, I prefer the evidence of the tenant over that of the landlord and I find that the landlord has failed to use the rental unit for the purpose stated on the notice.

The decision arising from the February hearing shows that the tenant paid \$525.00 per month in rent. I find that the tenant is entitled to double this amount pursuant to section 51(2) of the Act and I award the tenant \$1,050.00.

### Conclusion

I grant the tenant a monetary order under section 67 for \$1,050.00. This order may be filed in the Small Claims Division of the Provincial 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: July 12, 2013

---

Residential Tenancy Branch

