



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Intergulf Development (Q.E. Park) Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This was a hearing with respect to the tenant's application for compensation and an order that the landlord comply with the provisions of the *Residential Tenancy Act*. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend although served with the application and Notice of Hearing sent by registered mail on November 2, 2013.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation pursuant to section 51 of the *Residential Tenancy Act*?

Background and Evidence

The rental unit is a residential property in Vancouver. The tenancy began in June 2011 for a fixed term and thereafter month to month. The rent was \$2,695.00, payable on the first of each month.

The landlord served the tenants with a two month Notice to End Tenancy for landlord's use dated July 22, 2013. The Notice to End Tenancy required the tenants to move out of the rental unit by October 1, 2013. The grounds for the Notice were that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The tenants applied to dispute the Notice to End Tenancy on the basis that the landlord did not have the necessary permits in hand to demolish the rental property when the Notice was given, but prior to the hearing, the parties resolved the matter on the basis that the tenants would abide by the prematurely given Notice to End Tenancy and the landlord would give the tenants an additional month's rent as compensation in addition to the one month free rent required to be given pursuant to section 51 of the *Residential Tenancy Act*.

On August 28, 2013 the tenants gave the landlord a 10 day notice that they intended to move out of the rental unit on September 7, 2013. They requested payment of pro-rated rent for the balance of the month of September in the amount of \$2,066.09, being 23 days rent at a per diem of \$89.83.

The tenants moved out pursuant to the Notice. The tenants received a refund of the security deposit, but the landlord has neglected or refused to pay the pro-rated rent as claimed.

Analysis

Section 50 of the *Residential Tenancy Act* provides as follows:

- 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*].

Section 50(3) makes it plain that the fact that the tenants exercised their right to give the landlord a 10 day notice, does not alter the landlord's obligation to provide the compensation required under section 51. Because the tenants had not paid rent for September, they correctly reduced the amount of compensation requested by deducting prorated rent for the seven days in September that they occupied the rental unit.

Conclusion

I find that the tenant is entitled to a monetary award as compensation pursuant to section 51 of the *Residential Tenancy Act* in the amount claimed. The tenant is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,116.09 and I grant the tenant an order under section 67 in the said amount. This order may be registered 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: February 13, 2014

Residential Tenancy Branch

