



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 01, 2013. Monthly rent of \$3,150.00 was due and payable in advance on the first day of each month, and a security deposit of \$2,076.00 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 October 31, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is December 31, 2013. 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.

The tenants paid rent in full for November 2013. Subsequently, the parties entered into a written agreement by date of December 01, 2013. In the agreement it was noted that the landlord had collected an overpayment of security deposit in the amount of \$501.00 [\$2,076.00 (amount collected) **MINUS** \$1,575.00 (amount permitted under the Act)]. The parties agreed that the overpayment would be applied against December's rent of

\$3,150.00. As a result, the balance of rent paid for the full month of December was \$2,649.00 (\$3,150.00 - \$501.00).

Following this, by letter dated December 10, 2013, the tenants gave notice to end tenancy effective December 22, 2013, and informed the landlord of their forwarding address. Further, the tenants calculated the amount of their entitlement to a reimbursement of pro-rated rent for the 9 day period from December 23 to 31, 2013. The parties testified that the landlord's subsequent reimbursement of \$914.00 resolved that aspect of the business between them concerning December's rent.

Thereafter, however, the tenants claim they did not receive their entitlement to reimbursement of the equivalent of 1 month's rent under the Act.

Analysis

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

Section 50 of the Act addresses how **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.

(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*].

As set out earlier above, the landlord refunded the rent which was paid for the period after the effective date of the tenants' notice in December (December 23 to 31, 2013).

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, in part:

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.

(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.

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

Based on the documentary evidence and testimony, and in consideration of the above statutory provisions, I find that the tenants have established entitlement to compensation of \$3,150.00, which is the "equivalent of one month's rent payable under the tenancy agreement," in addition to recovery of the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$3,200.00** (\$3,150.00 + \$50.00). 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: April 22, 2014

Residential Tenancy Branch

