



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 14, 2014, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony. The Tenant provided documentary evidence that the Landlords were served notice of this application and this hearing by registered mail on July 21, 2014. The Tenant submitted Canada Post tracking information in his documentary evidence that confirmed Canada Post had attempted delivery of the package on July 22, 2014 and that a notice card was left that date to advise the Landlord they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on July 27, 2014 that the registered mail was available for pick up.

As of August 07, 2014 the Canada Post tracking information confirms that the Landlords still did not pick up the registered mail. Based on this information, I find that the Landlords were provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of each Landlord to avoid service and I find each Landlord was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*. Accordingly, I continued in the absence of both Landlords.

Issue(s) to be Decided

Has the Tenant proven entitlement to a monetary order?

Background and Evidence

The Tenant submitted evidence that he entered into one year fixed term tenancy agreement that commenced on September 1, 2011 and continued on as a month to

month tenancy The Tenant was required to pay rent of \$2,100.00 on the first of each month.

The Tenant testified that there were ongoing disputes between him and his Landlords and then on October 15, 2013, he was served with a 2 Month Notice to end tenancy for landlord's use.

The Tenant provided in evidence, a copy of a 2 Month Notice to end tenancy dated October 15, 2013 that was effective January 1, 2014 which provided the following reason(s) for ending the tenancy:

- *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 Tenant testified that he moved out of the rental unit November 30, 2013, after serving the Landlord notice they would be vacating early. The Tenant argued that the Landlords did not move into the property and that they did not have children so he was seeking compensation of \$4,200.00 which is equal to two month's rent.

Analysis

Section 49(3) of the Act stipulates that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the Act stipulates that if a landlord issues a 2 Month Notice to end tenancy for landlord's use pursuant to Section 49 of the Act, then the tenant will be entitlement to compensation as follows:

- 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.

- (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.

In this case the undisputed evidence was that the Tenant vacated the rental unit early in November 2013, after being served a 2 Month Notice, pursuant to section 49(3) of the Act, and the Landlords or a close family member did not occupy the rental unit. Accordingly, I grant the Tenant his application for a monetary order for **\$4,200.00**.

The Tenant has been successful with her application; therefore, I award her recovery of her **\$50.00** filing fee.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$4,250.00** (\$4,200.00 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the British Columbia Small Claims Court and be 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: December 19, 2014

Residential Tenancy Branch

