



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of a Tenant's Application for monetary compensation pursuant to sections 49, 51 and 67 of the *Residential Tenancy Act*, in relation to a 2 Month Notice to End Tenancy issued on August 1, 2014 (the "Notice").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the Tenants entitled to compensation equivalent to a month's rent pursuant to section 51?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated that the parties entered into a one year fixed term tenancy commencing October 1, 2013 (the "Agreement").

In the "Length of Tenancy" section on page 2 of 6 of the Agreement, the parties checked off the box providing that "the tenancy may continue on a month to month basis at the expiration of the year". Monthly rent was payable in the amount of \$3,800.00.

The parties agree that the Landlord served the Notice by email. While it was noted that such service is not effective pursuant to the *Act*, the Tenants, in reliance on the Notice moved from the rental unit on September 29, 2014.

Prior to issuing the Notice, the Landlord sent an email to the Tenants, dated July 9, 2014, wherein she wrote that she would not be continuing the tenancy on a month to month basis as provided in the Agreement. Attached to this email was a Mutual Agreement to End a Tenancy, which the Landlord requested the Tenants sign. In response, the Tenants confirmed they were not agreeable to vacating the rental unit and that the end of the tenancy was not, from their perspective, a mutual agreement. The Tenants informed the Landlord that to end the tenancy for Landlords' Use, would require the issuance of a 2 Month Notice to End Tenancy, and to this end, the Tenants provided the Landlord with a blank form for her completion.

The Landlord testified that she did not read the 2 Month Notice to End Tenancy, simply filled it out and sent it back to the Tenants.

The 2 Month Notice to End Tenancy which was entered into evidence by the Landlord was incomplete; specifically, the reasons for issuing the notice were not checked off on the second page. During the hearing the Tenants confirmed that the copy which was served on them was in fact complete. The Landlord denied completing the form and insisted she did not read it. As the parties agreed the Notice had been sent to the Tenants by email, I requested that the Tenants provide a copy of the email and attached Notice for my attention. During the hearing, the Tenants forwarded a copy of the email and attachment to the Branch. The copy which I received, and which the Tenants testified was sent to them by the Landlord was a complete copy which indicated the reasons cited in the Notice were that the rental unit will be occupied by the Landlord or the Landlord's spouse or close family member.

The Landlord stated that the Tenants were employed in the computer business and could have easily changed the form.

The Tenants seek compensation of one month rent pursuant to sections 49 and 51 of the *Act*.

Analysis

The Landlord prepared the Agreement, which provided that the tenancy may continue as a month to month. Had she wished to end the tenancy after the year, she could have checked the box indicating same, and had the Tenants initial this option. Instead, she preserved the ability to continue the tenancy beyond the year and in doing so was obligated to end the tenancy in accordance with the Act.

I prefer the evidence of the Tenants as to the Notice which they received by email and find that the Landlord checked off the box indicating she intended to occupy the rental unit. Notably, this is consistent with the Landlord's own testimony that she intended to move back into the rental unit.

The parties agree the Landlord issued the Notice pursuant to section 49 of the *Residential Tenancy Act*; the relevant portion of that section provides as follows:

Landlord's notice: landlord's use of property

49 (3) 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.

As noted earlier in this my decision, the service of the Notice by email was ineffective pursuant to Act. However, the Tenants relied on the Notice and moved from the rental unit.

Pursuant to section 51, a Tenant who receives a notice to end tenancy pursuant to section 49 is entitled to compensation equivalent to one month's rent. Section 51 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.

(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.

The Landlord testified that she did not read the Notice and was unaware of the compensation provisions of section 51; I find this to be an irrelevant consideration. Section 51 provides that the Tenants are entitled to compensation; there is no discretion.

In consideration of the above, and on a balance of probabilities, I award the Tenants \$3,800.00 which is the amount that is the equivalent of one month's rent payable under the tenancy agreement.

Conclusion

The Tenants are entitled to compensation pursuant to section 51 of the *Act* and are granted a Monetary Order for the sum of \$3,800.00. This Order may be filed in the B.C. 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: June 22, 2015

Residential Tenancy Branch

