



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

Both parties were present at the hearing and the landlord confirmed she was served with the Application/Notice of Hearing by registered mail. I find the Application was legally served pursuant to section 89 of the Act. The landlord was upset as the tenant's lawyer had called her this morning to inform her of their intention to file new evidence today; she said this was unfair and unethical. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant with double the rent pursuant to sections 49 and 51 as the landlord did not use the unit according to their stated purpose; and
- b) A monetary order to compensate the tenant for losses due to the forced move.

Preliminary Issue:

I informed the landlord that I had received no late evidence from the tenant's lawyer so would not allow an introduction of it at the hearing as the landlord had had no opportunity to consider it and respond.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and she is entitled to double the monthly rent pursuant to section 51 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence that was submitted in time and to make submissions. It is undisputed that the tenancy began November 2009 and rent was \$1875 a month. It is undisputed that the landlord served a section 49 Notice to End Tenancy on the tenant on June 30, 2015 to be effective September 1, 2015 for they intended to renovate and move into the property. It is undisputed that the tenant vacated by August 1, 2015 and the landlord

refunded her the rent for August 2015 in accordance with section 51 of the Act and dealt with the security deposit.

However, the landlord said she was diagnosed with a serious progressive illness on August 4, 2015 which made it impossible to proceed with their plans to renovate and move. Therefore they listed the property for sale on August 10, 2015. She asked if these mitigating circumstances could be considered and also the fact that the tenant's lawyer had added stress to her medical condition by acting unfairly and attacking her integrity by telling her this morning that they planned to introduce new evidence. She said the tenant and her lawyer had found some references on a website that was not legitimate for she had never listed with that particular real estate firm and tried to upset her with it this morning

The tenant requests a monetary order for twice the monthly rent in accordance with section 51 of the Act. She said she had reconsidered and was withdrawing her request for moving costs.

In evidence is an advertisement by a real estate firm listing the property for sale and dated August 14, 2015, many emails including one on June 19, 2015 from the landlord stating they were going to renovate the suite for occupancy and advising the tenant of her right to free rent for August 2015.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The *Residential Tenancy Act* provides:

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.*

(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.

I find as fact that the landlord served the section 49 Notice to End Tenancy for the expressed purpose of renovating the suite to occupy themselves. However, due to unforeseen circumstances, the landlord put the property up for sale instead in early August. Although the landlord states some good reasons why she could not fulfill her stated purpose, I find the Act is clear that she must pay the tenant double the monthly rent. As explained to the parties in the hearing, the Act does not provide for exemptions from this section for any reason, even if the tenant acted hastily or unfairly by trying to introduce new evidence today. The tenant withdrew her request for moving costs so I decline to consider this request.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Double monthly rent (1875x2)	3750.00
Filing fee	50.00
Total Monetary Order to tenant	3800.00

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 03, 2015

Residential Tenancy Branch

