



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

On July 04, 2016 a hearing was convened in regards to this Application for Dispute Resolution, which the Tenant and the Agent for the Landlord attended. The Residential Tenancy Branch Arbitrator presiding over that hearing adjourned the matter for reasons outlined in an interim decision dated July 04, 2016, which I have read.

In the interim decision the Residential Tenancy Branch Arbitrator adjourned the hearing for the purpose of providing the Tenant with the opportunity to resubmit and serve evidence. The Tenant was given authorization to resubmit and serve a copy of the Two Month Notice to End Tenancy for Landlord's Use, an email regarding the Notice to End Tenancy, and an internet advertisement. The Landlord was given authorization to submit and serve evidence in response to those documents.

In the interim decision the Arbitrator reminded the parties that they must comply with the Residential Tenancy Rules of Procedure. There is nothing in the decision that indicates the parties were given permission to serve evidence in any manner that is not authorized by the *Residential Tenancy Act (Act)*.

The Residential Tenancy Branch Arbitrator presiding over the July 04, 2016 hearing has left the Residential Tenancy Branch and is not available to adjudicate this matter. I have been given the responsibility of adjudicating the matter.

The hearing on August 18, 2016 was convened to consider the merits of the Tenant's application for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the tenancy agreement or the *Act*, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that sometime in December the amended Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On July 05, 2016 the Tenant submitted six pages of evidence to the Residential Tenancy Branch, which included a cover letter, a copy of the Two Month Notice to End Tenancy for Landlord's Use, an email regarding the Notice to End Tenancy, and two internet advertisements. The Tenant stated that this evidence was served to the Landlord, via email, on July 16, 2015. The Agent for the Landlord stated that he received the evidence that was sent by email, although he did not receive copies of the internet advertisements. The copy of the Two Month Notice to End Tenancy for Landlord's Use and the email regarding the Notice to End Tenancy, which the Agent for the Landlord acknowledged receiving, were accepted as evidence.

The cover letter was not accepted as evidence as this document was served after the start of the proceedings and the Arbitrator did not authorize the Tenant to submit this document.

The two internet advertisements were not accepted as evidence as the Agent for the Landlord did not acknowledge receipt of that evidence. The parties were told that the hearing would proceed and if I determined that these documents were essential to the hearing I would consider a second adjournment. On the basis of the undisputed testimony that the rental unit was advertised, I am satisfied that I can adjudicate this matter without physically viewing the internet advertisements.

The parties were given the opportunity to present relevant oral evidence; to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to compensation because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2011;
- at the end of the tenancy the rent was \$2,000.00 per month;
- on July 16, 2015 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by September 30, 2015; and
- the rental unit was vacated on October 03, 2015 or October 04, 2015.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property was submitted in evidence. The Notice does not cite the reason for ending the tenancy.

A copy of an email, dated July 16, 2015, was submitted in evidence, which the parties agree was served with the Two Month Notice to End Tenancy. In the email an Agent for the Landlord declared that the "owner has informed us that they will take back property for own occupied". The Tenant stated that he understood the Notice to End Tenancy was being served because the owner intended to move back into the rental unit.

The Agent for the Landlord stated that:

- the Notice to End Tenancy was served because the Landlord's son wished to move into the rental unit;
- the Landlord's son moved into the rental unit sometime in October of 2015;
- the Landlord's son did not like living in the rental unit;
- the Landlord's son moved out of the rental unit approximately one month after moving in;
- the rental unit was advertised for rent sometime in November or December of 2015; and
- the rental unit was rented for February of 2016.

The Tenant stated that:

- he went to the rental unit on several occasions after it was vacated to pick up his mail;
- it seemed vacant every time he went to the unit; and
- on November 27, 2015 he found the unit advertised for rent on a popular internet website.

The Tenant is seeking compensation for costs associated to moving, including the increased rent at his new home.

Analysis

On the basis of the undisputed testimony I find that a Two Month Notice to End Tenancy was served to the Tenant on July 16, 2015 and that the reason for serving the Notice was that the Landlord or a close family member of the Landlord intended to move into the rental unit.

Section 51(2) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

On the basis of the testimony of the Agent for the Landlord I find that the rental unit was rented to a third party in February of 2016. Even if I accepted the Agent for the Landlord's testimony that the Landlord's son moved into the rental unit for

approximately one month, I would find that the rental unit was not used for the purpose for which the tenancy was ended for at least 6 months after the effective date of the Notice to End Tenancy. I therefore find that the Landlord must pay the Tenant \$4,000.00, which is the equivalent of double the monthly rent, pursuant to section 51(2)(b) of the *Act*.

The *Act* authorizes me to grant compensation to a tenant if the tenant suffers a damage or loss from the landlord not complying with the *Act* or the tenancy agreement. Such compensation is only awarded when there is no statutory remedy.

In these circumstances the Tenant already received compensation, that is the equivalent of one month's free rent, pursuant to section 51(1) of the *Act*, which is intended to compensate the Tenant for the inconvenience and costs of moving. The Tenant is also entitled to compensation pursuant to section 51(2)(b) of the *Act*, which is the statutory remedy applied when a landlord does not use the rental unit for the purpose cited on a Two Month Notice to End Tenancy for Landlord's Use of Property. As there are statutory remedies in place, I am unable to award any additional compensation to the Tenant for costs associated to moving out of the rental unit.

I find that the Tenant's application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

The Tenant has established a monetary claim of \$4,050.00, which includes \$4,000.00 for compensation pursuant to section 51(2)(b) of the *Act* and \$50.00 in compensation for the cost of filing this Application, and I grant the Tenant a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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: August 24, 2016

Residential Tenancy Branch