



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNDC, FF
Landlord: MNDC, MND, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant originally filed their application **March 23, 2016** and subsequently amended **April 26, 2016** pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage or loss – Section 67
1. An Order to recover the filing fee for this application (\$100) - Section 72.

The landlord originally filed their application **October 14, 2016** for Orders as follows;

2. A monetary Order for damage or loss – Section 67
3. A monetary Order for damages – section 67
4. An Order to recover the filing fee for this application (\$100) - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence to this hearing that they wished to present. The parties each acknowledged receiving all the evidence of the other. The landlord acknowledged filing their application later than permitted by the Rules of Proceedings to allow the tenant to respond to the landlord's application within the 7 days permitted them to do so; and, that their application was deemed received and also actually received less than 14 days before this hearing. As a result the landlord's application was preliminarily **dismissed**, with leave to reapply. With the tenant's consent the landlord was permitted to reference their evidence in response to the tenant's claims.

The tenant was given opportunity to be heard, to present relevant evidence and to make submissions.

Preliminary matters

The tenant withdrew their claim on application for a *shortage in refunds* in the amount of \$20.00.

In addition the tenant was apprised that their claims on application for *registered mail* costs and for *printing/scanning/parking* in the sum of \$100.40 are not compensable costs. The parties were informed that costs to advance their application are costs for which parties are equally personally responsible as litigation costs.

As a result, the remaining claims are solely in respect to compensation pursuant to **Sections 50, 51 and 72** of the Act, and the hearing proceeded on the merit of these claims, only.

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. This tenancy started May 15, 2014 and ended January 15, 2016. The rent payable under the tenancy agreement was \$1000.00 per month. The undisputed evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated November 30, 2015 for the reason / purpose the landlord or the landlord's spouse or a close family member of the landlord or landlord's spouse – with a stated effective date of January 31, 2016.

The tenant acted on the landlord's good faith intention of the Notice and vacated the rental unit. The parties agreed that the tenant received the equivalent of one month's rent under the tenancy agreement by not being obligated to pay rent for the last month of January 2016.

On January 05, 2016 the tenant provided written notice to the landlord pursuant to Section 50 of the Act that they were vacating early on January 15, 2016.

The landlord testified that on January 27, 2016 they personally began occupying the rental unit and testified they did so for 42 days thereafter, then vacated and re-rented the unit to a new tenant.

Analysis

The relevant evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use for their stated own use.

The tenant has claimed compensation under Section 50, 51(1.1) and 51(2) of the Act which states as follows: *emphasis mine*.

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*].

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.**

Simply stated, I find the amount withheld by the tenant as their compensation for receiving the landlord's 2 Month Notice to End, for the purpose of **Section 50(2)**, is deemed to *have been paid* to the landlord: that is, as if paid to the landlord. Therefore the landlord must refund any rent paid, or deemed paid, for the period after January 15, 2016. As a result, I grant the tenant compensation for the period of January 16 to 31, 2016 in the amount of **\$533.33**, representing 16 days at \$33.33 per day.

The undisputed relevant evidence is that the landlord occupied the unit soon after the tenant vacated, but failed to occupy the unit for at least 6 months after the effective date of the Notice: January 31, 2016. As a result, pursuant to **Section 51(2)** of the Act I grant the tenant *double* the monthly rent payable under the agreement, **\$2000.00**.

The tenant is further entitled to recover their filing fee of \$100.00, for a sum award of **\$2633.33**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$2633.33**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed, with leave to reapply.

The tenant's application, in relevant part, is granted.

This Decision is final and binding on both parties.

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: October 31, 2016

Residential Tenancy Branch