



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of evidence supplied by each. The landlord confirmed receipt of the tenants' amended application, decreasing the claim made.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$1,800.00 as compensation under section 51 of the Act?

Is the tenant entitled to compensation for the cost of moving, in the sum of \$1,357.40?

Background and Evidence

The tenancy commenced approximately five years ago. Rent was \$900.00 per month. There was no dispute that the respondent purchased the property and, as a result the previous landlord issued a two month Notice ending tenancy for landlords' use of the property. The Notice had an effective date of May 1, 2016. The respondent confirmed that the intent had been to occupy the unit. The tenant did not dispute the Notice.

While seeking a new rental unit the tenant came across a rental listing for his unit. A copy of the listing, showing rent in the sum of \$1,300.00 per month, was supplied as evidence.

The tenant has requested compensation equivalent to two months' rent, as the respondent did not occupy the unit as required.

The tenant vacated on the basis of the Notice ending tenancy and, as a result, incurred costs for moving that were not necessary, given the failure of the respondent to occupy the rental unit. The tenant set out costs claimed:

Title search – locate respondent address	\$9.45
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Moving expenses – bubble wrap, boxes, mattress cover, packing paper	185.41
Storage - boxes	22.48
Storage	115.50
Storage	135.00
Storage	278.25
Storage	278.25
TOTAL	\$1024.34

The tenant claimed the cost of registered mail. It was explained that the cost of mail is not a cost that is considered. A party may only claim the direct costs of a breach of the Act.

I note that one receipt includes cleaning items totaling \$25.90.

The invoices supplied for storage include costs for April 2016 in the sum of \$115.50. The tenant said he already had a storage unit and was given a reduced fee for May 2016.

It took the tenant months to locate a residence as he works at sea, which made it very difficult for him to locate a unit in such a tight rental market. The tenant would return mid-month, which made the search even more difficult. The tenant was able to locate a new rental unit on July 15, 2016.

The tenant had to sleep on a blowup bed at his mothers' home. The tenant has a daughter that he cares for. The unnecessary move resulted in a great deal of disruption to their lives.

The respondent confirmed that at the time of purchase the intention was to occupy the rental unit. The offer to purchase document signed by the respondent, requested vacant possession of the rental unit. The respondents' plans changed and the unit was very quickly advertised for rent. The respondent did not intend to rent the unit and that occurred only when unforeseeable circumstances prohibited the respondent from occupying the unit.

The respondent said that he should not be responsible for storage costs incurred over a number of months. The respondent stated that he had to purchase boxes and that those are typical costs when a move is required. The respondent does not believe that costs incurred as the result of the tenant's work schedule should allow the tenant to claim additional costs. The respondent was opposed to the tenant receiving compensation when a move was required.

Analysis

Section 49 of the Act provides a landlord with the ability to issue a Notice ending tenancy if the purchaser indicates, in writing, that they or a close family member plans to occupy the rental unit within a reasonable period of time. A two month Notice for landlord's use of the property was issued by the previous landlord as the respondent had indicated they wanted vacant possession of the rental unit. The Notice ending tenancy indicated the respondent would occupy the rental unit after the purchase closed.

There was no dispute that the respondents' plan to occupy the rental unit was unable to be completed and, as a result, the unit was listed for rent. It did not occur to the respondent that he could check for a current tenant, in an attempt to continue the tenancy.

Section 51(1) of the Act provides:

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.*

(Emphasis added)

The tenant received the equivalent of one months' rent from the previous landlord/owner.

The respondent has confirmed that the unit was not used for the purpose provided on the Notice ending tenancy.

Section 51(2) of the Act provides:

(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.

Therefore, as the respondent did not use the rental unit for the stated purpose, by occupying the unit for at least six months I find pursuant to section 51(2) of the Act that the tenant is entitled to compensation in the sum equivalent to double the monthly rent; \$1,800.00.

I find that Section 51(2) of the Act does not bar a tenant from making a claim for damages which flowed from the breach of the Act. I find that if the respondent had not breached the Act, by requesting vacant possession of the unit and then not occupying the unit, the tenancy would have continued and the tenant would not have suffered the losses that he has.

I have rejected the suggestion that the tenants' work schedule resulted in additional costs. If the Notice ending tenancy had not been issued, or if it had been withdrawn, the tenant would not have suffered this loss. The tenant should not be penalized as a result of his work schedule. I find that the breach of the Act by the respondent placed the tenant in the position of having to relocate when in fact the relocation was not required.

Therefore, I find pursuant to section 67 of the Act that the tenant is entitled to compensation as follows:

	Claimed	Accepted
Title search – locate respondent address	\$9.45	\$9.45
Moving expenses – bubble wrap, boxes, mattress cover, packing paper	185.41	159.51
Storage - boxes	22.48	22.48
Storage	115.50	0
Storage	135.00	135.00
Storage	278.25	278.25
Storage	278.25	278.25
TOTAL	\$1024.34	\$882.94

I have dismissed the cost claimed for cleaning items. These are items that would normally be purchased by a tenant.

I have dismissed the cost of storage for April 2016 as the tenant already had a storage locker and the tenant had yet to vacate the rental unit.

Therefore the tenant is entitled to total compensation in the sum of \$2,682.94. The balance of the claim is dismissed.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$2,782.94. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to compensation in the sum of \$2,682.94.

The balance of the claim is dismissed.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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 05, 2016

Residential Tenancy Branch