



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- a Monetary Order for money owed or compensation for damage or loss pursuant to section 67 of the *Act*.

The landlord requested:

- a Monetary Order for unpaid rent and for damage to the unit pursuant to section 67 of the *Act*;
- authorization to retain the security deposit pursuant to section 38 of the *Act*; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Although the tenant attended this hearing, the landlord did not appear. The landlord's failure to attend this hearing and present evidence relating to his application leads me to order that his application for a Monetary Order for unpaid rent as well as a return of the filing fee, and authorization to retain the security deposit are dismissed without liberty to reapply.

The tenant stated that he sent the landlord his Application for Dispute Resolution and evidentiary package twice. The first time was sent by XpressPost on January 3, 2017. The tenant explained that he was unsatisfied with the signature that he received from the landlord on the packing slip and re-sent the Application for Dispute Resolution and evidentiary package on January 14, 2017 by way of Registered Mail. A Canada Post tracking number was provided to the hearing.

Pursuant to sections 88, 89 and 90 of the *Act*, the landlord is deemed served with the tenant's Application for Dispute Resolution and evidentiary package on January 19, 2017.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order as compensation for loss suffered as a result of a landlord's 2 Month Notice being issued inaccurately?

Background and Evidence

The tenant explained that this tenancy began in December 2010 and ended on December 1, 2014. Rent was \$800.00 per month and a \$400.00 damage deposit continues to be held by the landlord.

In his evidentiary package, the tenant produced a copy of the 2 Month Notice to End Tenancy issued on August 31, 2014. The reason indicated on the notice states *the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord of the landlord's spouse.*

On November 4, 2014, the tenant attended a hearing with the Residential Tenancy Branch disputing this 2 Month Notice to End Tenancy. The arbitrator at this hearing granted an adjournment on the matter.

On December 11, 2014, the previously adjourned hearing was reconvened. During this hearing, the arbitrator stated, "The issue surrounding the landlord's 2 Month Notice was not considered as the tenancy has ended."

On May 27, 2015, the tenant attended the residence with a process server as he was attempting to serve the landlord with some legal documents. The tenant was greeted at the door by three men in their 20s who identified themselves as the current tenants. These men told the tenant that they had lived in the premises "for a few months." The tenant stated that he did not ask if these men were relatives. The tenant stated he had previously lived on the premises for four years and was familiar with the family. He explained that he could confidently identify that none of these men were members of the landlord's family.

Pursuant to section 51 of the *Act*, the tenant is seeking compensation from the landlord for not having used the rental unit for the stated purpose. Specifically, the tenant is seeking a Monetary Order of \$1,122.58. The tenant explained that this money was a claim for two months of rent due under the *Act*, a return of the security deposit, less rent that he testified that he did not pay in November or December 2014.

Item	Amount
Rent x 2 @ 800.00	\$1,600.00
Return of Security Deposit \$400.00	400.00
Less rent not paid November 2014	(- 800.00)
Less rent not paid for December 1-3, 2014	(- 77.42)
	Total = \$1,122.58

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 49 of the *Act* requires that a good-faith requirement be present when a landlord issues a 2 Month Notice to a tenant. Section 49(3) states;

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.

Should this good-faith requirement not be fulfilled, the tenant may find relief in Section 51 of the *Act*.

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

(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.

Based on the tenant's testimony, I am satisfied that the landlord did not use the rental premises as stated on the 2 Month Notice served on the tenant. The tenant explained

that he was able to conclusively identify persons occupying the rental unit who were not “the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or the landlord’s spouse” the reason cited in the 2 Month Notice for ending this tenancy. In accordance with paragraph 51(2)(b) of the *Act*, I find that the tenant is entitled to a monetary award of \$1,600.00, an amount equivalent to two month’s rent during this tenancy.

In his application for a Monetary Order, the tenant has in error subtracted \$800.00 for November 2014 rent from his application. The tenant explained that his reason for this was because he did not pay the rent for this month as he was in the process of trying to vacate the rental unit and was in a dispute with the landlord. Further, he sought to deduct \$77.42 from his claim for December 2014 rent that he overheld in the rental unit.

As the landlord had issued, a 2 Month Notice to end tenancy on September 1, 2014, pursuant to section 51(1) of the *Act*, the tenant was entitled to free rent for November 2014. The tenant therefore, did not need to pay rent for this month and should not have included a reduction for it with his Monetary Order.

The tenant did, however, overhold in the rental unit from December 1-3, 2014. Pursuant to section 57 of the *Act* the tenant does owe rent for this time period.

In addition to the Monetary Order for an improperly issued 2 Month Notice, the tenant sought a return of his security deposit. The landlord may only retain the security deposit pursuant to the provisions outlined in section 38 of the *Act*.

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of:

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, *the landlord must do one of the following:*

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit

While the landlord made an application for dispute resolution to retain the security deposit, he did not attend the hearing. Due to the landlord’s non-appearance at the

hearing and therefore his inability to provide testimony regarding his claim to retain the security deposit, the tenant is entitled to its return.

As such, I am granting the tenant a Monetary Order of \$1,922.58.

Conclusion

The landlord's application for a Monetary Order for unpaid rent as well as for a return of the filing fee is dismissed.

The landlord's application to retain the Security Deposit is dismissed.

I am making a Monetary Order pursuant to section 67 of the Act for \$1,922.58 in favour of the tenant as follows for the following items;

Item	Amount
Monthly Rent x 2 @ 800.00 = \$1,600.00	\$1,600.00
Return of Security Deposit \$400.00	400.00
Less rent not paid for December 1-3, 2014	(- 77.42)
	Total = \$1,922.58

The tenant is provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: February 22, 2017

Residential Tenancy Branch