



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order pursuant to Section 50 and Section 51 of the *Residential Tenancy Act* (the Act). The tenant further seeks compensation for loss of use of certain appliances during the tenancy included in the rent, and to recover the filing fee.

Both parties attended the hearing and the landlord acknowledged receiving the evidence of the tenant. The landlord provided one page of document evidence which they acknowledge was not provided to the tenant. The parties gave testimony and were provided the opportunity to make relevant submissions, and ask question of the other. The parties were further provided with opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started September 01, 2013 and has ended. The payable rent was \$1125.00 per month. The tenancy ended February 23, 2016 pursuant to a landlord's 2 Month Notice to End for Landlord's Use of Property (Notice to End) dated December 22, 2015. The tenant did not dispute the Notice to End and vacated the unit earlier than the effective date of the Notice to End. The evidence is that the landlord's Notice to End was issued for the reason prescribed by Section 49(3) of the Act that, *the unit would be occupied by the landlord or the landlord's spouse or a close family member of the landlord or landlord's spouse.*

The parties agree the tenant gave the landlord a written tenant's notice to end dated February 13, 2016 pursuant to Section 50(1) of the Act informing the landlord they were vacating earlier than the effective date of the Landlord's 2 Month Notice on February 23, 2016. The parties agree that during February 2016 the tenant was not required to satisfy the rent for that month as compensation. The tenant claims the landlord did not refund to them rent for the period *following the effective date of the tenant's notice of February 23, 2016* as prescribed by Section 50(2).

1. The tenant seeks the pro-rated rent for the 6 day period of February 23 to February 29, 2016.

The tenant claims that in May 2016 they received a phone call from Statistics Canada advising they had not received response to the census for the rental unit property they previously vacated. From this information the tenant concluded the landlord did not occupy the rental unit accomplishing the stated purpose for ending the tenancy as per the 2 month Notice to End. The landlord representative claims they have no knowledge of the owner's conduct beyond February 2016 as their contract with the owner ended. The tenant acknowledged they had no other evidence in support of their assertion.

2. The tenant seeks compensation pursuant to Section 51(2) as a consequence of the above.

The parties agree that in October 2015 the tenant sent the landlord an e-mail advising them that in *late 2013* they had advised the landlord of a problem with the **dishwasher**, and that the problem persisted to the end of the tenancy in 2016. The tenant claims a service person looked at the dishwasher in 2013 but could not fix it. The landlord claims their service person attended to the repair of the dishwasher and to their recollection, resolved the problem. The tenant acknowledged they did not escalate the problem with the landlord, but simply did not use the dishwasher.

3. The tenant seeks compensation for loss of use of the dishwasher for the duration of the tenancy.

The parties also agree that in October 2015 the tenant sent the landlord an e-mail advising them that in *late 2013* they had advised the landlord of a problem with the **dryer**, and that the problem persisted to the end of the tenancy. Again, the tenant claims a service person looked at the dryer but did not fix it. The landlord claims their service person attended to the repair of the dryer and to their recollection resolved the

problem. Again, the tenant acknowledged they did not escalate the problem with the landlord but simply did not use the dryer and dried their laundry indoors.

4. The tenant seeks compensation for loss of use of the dryer for the duration of the tenancy.

The parties agree that on October 08, 2015 the tenant sent the landlord an e-mail advising them that the **washer** now was experiencing a problem and would not operate as intended. The parties agreed that ultimately the washer was repaired to satisfaction on November 15, 2015. In the interim near 6 week period the tenant claims they were greatly inconvenienced by having to attend a laundromat and pay out of pocket for washing the family laundry as well as use of the laundromat dryer as further result because the dryer of the rental unit was not working as well.

5. The tenant seeks compensation reflecting the tenant's 5 trips to the laundromat, their time at \$35.00 per hour, mileage costs, machine usage coins, "invoice preparation fees" and ultimately, "late payment fees" as the landlord did not respond to their initial requests for compensation. In total the tenant seeks \$450.55 solely for laundromat related costs during the period the rental unit washer was inoperative. The landlord testified that they had offered the tenant \$100.00 to no avail.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

On preponderance of the evidence and balance of probabilities I find as follows.

I find that **Section 50(2)** of the Act states that if a tenant gives notice they are vacating earlier than the effective date of the landlord's Notice to End the landlord must refund any rent paid from the effective date of the tenant Notice to End to the effective date of the landlord's Notice to End. **Section 52(1.1)** states that if rent is withheld on the last month of occupancy (as a result of the landlord's 2 Month Notice to End) that rent is deemed to have been paid to the landlord for that month. As a result I find the tenant effectively paid rent for February 2017 and is entitled to a refund of rent for 6 days in the pro-rated amount of **\$232.75** [(\$1125.00 divided by 29 days) x 6 = 232.75].

I find the tenant has not provided sufficient evidence establishing the landlord / owner did not accomplish the stated purpose for ending the tenancy. As a result, **I dismiss**

this portion of the tenant's claim for compensation pursuant to Section 51(2), *without leave to reapply*.

I find the tenant's claim in respect to a problem with the dishwasher must be mitigated by acknowledgement they abandoned seeking remedy to the problem when the service call in 2013 did not resolve the problem to satisfaction. While according to the landlord the problem was deemed to have been resolved and heard nothing else regarding it. I find the landlord cannot deal with a problem of which they are not aware. Regardless, the tenant also bears the burden to prove the appliance remained inoperative after 2013 to October 2015, and they have not done so.

None the less, I find it is clear that as of October 14, 2015 the parties were both of the same understanding the dishwasher was inoperative and was not resolved by the end of the tenancy. I grant the tenant compensation representing loss of use of the dishwasher from October 2015 to February 2016 in the set amount of **\$200.00**.

Equally, in respect to the dryer, I find the tenant's claim in respect to a problem with the dryer must also be mitigated by acknowledgement they abandoned seeking remedy to it's problem when the service call in 2013 did not resolve the problem to satisfaction. While according to the landlord the problem with the dryer was deemed to have been resolved and heard nothing else regarding it. Again, I find the landlord cannot deal with a problem of which they are not aware. The tenant further has the burden to prove the appliance remained inoperative after 2013 to October 2015, and have not done so.

None the less, I equally find it is clear that as of October 14, 2015 the parties were both of the same understanding the dryer was inoperative which was not resolved by the end of the tenancy. Therefore, I grant the tenant compensation representing loss of use of the dryer from October 2015 to February 2016 in the set amount of **\$200.00**.

In respect to the failed washer, I find the tenant's portrayal of their claim for laundry costs as a result, inclusive of labour at \$35.00/hour, and of costs to prepare several invoices, and charging the landlord late payment / punitive fees to motivate settlement of their costs are extravagant not helpful in determining the value of the loss. However, it is clear from the detailed nature of the tenant's evidence respecting their laundromat usage that out of all the appliances the inoperative washer placed the greatest burden on the tenant. I find that a global amount in compensation for loss of use of the washer and the additional laundromat costs best represents the tenant's loss for their 5 trips to the laundromat, which I set at **\$175.00**.

As the tenant was successful in their claim they are entitled to recover their filing fee for their application of **\$100.00**, for a sum award of **\$907.75**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$907.75**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in relevant part is granted, and the balance is dismissed, *without leave to reapply*.

This Decision is final and binding.

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: April 07, 2017

Residential Tenancy Branch