



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL MNDC MNSD FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated May 26, 2017 to be effective July 31, 2017 was served by email and also by posting it on the door. The landlord agreed he received the tenants' the Application for Dispute Resolution which had been filed on May 29, 2017. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To obtain a monetary order for compensation pursuant to sections 49 and 51;
- c) To obtain a refund of the security deposit pursuant to section 38;
- d) To order the landlord to comply with the Act pursuant to section 62; and
- e) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced July 1, 2014 on a fixed term one year lease which reverted to a month to month lease. Rent is \$2800 a month and a security deposit of \$1400 and a pet damage deposit of \$350 were paid. The landlord served a Notice to End Tenancy stating "the

rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant vacated the property on or about July 5, 2017 and they have received one month free rent as required by section 51 of the Act. However, the tenant questions the motive of the landlord in ending the tenancy for he found some advertisements that appeared to be advertising the property at a higher rent. He no longer applies to cancel the Notice to End Tenancy since he has vacated. However, he requests compensation of double the monthly rent in accordance with section 51(2) since the landlord is not going to use the property for the stated purpose on the Notice to End Tenancy.

The landlord said he is the owner and he cannot move in as the tenants have not returned the keys yet. The tenant said he is waiting to do the move-out inspection and plans to return the keys by July 31, 2017 when his tenancy officially ends.

The tenant also pointed out that it is hard to determine ownership of the property as the individual who signed the lease is listed on the BCA Assessment information (in evidence) as the owner but another individual who attended the hearing today claims he is the owner and is moving in.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. As the tenant has vacated already, I find the tenant no longer seeks to cancel the Notice to End Tenancy.

In respect to the tenant's claim for compensation of double the monthly rent pursuant to section 51 (2), I find it is premature as his tenancy is not ended until July 31, 2017 and the individual who attended the hearing states he is the owner and is moving in. Due to the name confusion, I will order the individual who is planning to move in to prove in the next hearing with legal paperwork such as a title certificate that he is an owner or the close family member of the owner as defined in section 49 of the Act.

In respect to the tenants' claim for refund of the security and pet damage deposit, I find it is premature as section 38 of the Act provides a landlord has 15 days to refund it or claim against it at the end of the tenancy.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. I dismiss their claims for compensation as I find they are premature. No filing fee is awarded due to lack of success. After their tenancy is ended, I give them leave to reapply for the refund of their security deposit and any other compensation that they may claim pursuant to section 51 of the Act.

If there is a subsequent hearing, I HEREBY ORDER for the hearing that the person who is moving into the unit produce legal documents proving ownership of the unit and if he is not the owner, his close family relationship to the owner (as defined in section 49 of the Act).

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: July 19, 2017

Residential Tenancy Branch