



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF MNDC MT OLC

Introduction

The tenant has applied pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- an Order for the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- for a monetary order pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord’s agent, A.S. (the “landlord”) and the tenant appeared at the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenant’s application for dispute resolution in person. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenant’s application.

Following introductory remarks, the tenant explained that she had vacated the rental property on April 1, 2017 and was no longer pursuing an application to cancel the landlord’s notice to end tenancy or for more time to complete an application to cancel a notice to end tenancy.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order?
- Can the tenant recover the filing fee?
- Should the landlord be directed to comply with the *Act*?

Background and Evidence

Testimony was provided to the hearing by both parties that this was a fixed term tenancy that ran from June 2015 to June 2017. Rent was \$1,450.00 per month and a security deposit of \$725.00 collected at the outset of the tenancy was returned to the tenant.

The tenant explained that she sought a monetary order of \$2,900.00 per month in reflection of an improperly issued 2 Month Notice to End Tenancy that was served to her by the landlord.

On February 1, 2017 the landlord served the tenant with a 2 Month Notice to End Tenancy based on the rental unit being occupied by the landlord or the landlord's close family member. The tenant stated that following receipt of this notice she made arrangements for her family to move out of the rental unit. On April 1, 2017 the tenant vacated the property.

Around mid to late June 2017 the tenant's daughter was walking past the former house and she noticed that the property had been demolished. The landlord stated that his grandparents had in fact moved in to the property as was noted on the 2 Month Notice served on the tenant; however, shortly after they took possession of the property it was discovered that the property contained asbestos. The landlord followed up with a hazmat inspection company who performed tests on the property. These tests confirmed that the property had asbestos in its building materials. Following this discovery the landlord and his grandparents agreed that it made more economic sense to demolish the house rather than have the asbestos removed.

Analysis

Section 51(1) of the *Act* states, "A tenant who receives a notice to end a tenancy under section 49 of the *Act* [*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." Testimony was provided to the hearing that the landlord fulfilled this requirement of the *Act* and provided the tenant with free rent for one month.

The second portion of section 51 of the *Act* states, "In addition to the amount payable under subsection (1) [above], if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice, or 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, as applicable under section 49 of the *Act*, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement."

I am satisfied based on the evidence before me and the testimony provided by the tenant, that the landlord did not use the rental unit for the purpose stated in the 2 Month

Notice to End Tenancy. Both parties testified that the property was demolished shortly after it was occupied by the landlord. The 2 Month Notice to End Tenancy issued to the tenant stated that the purpose for its issuance was the landlord's use of property. While I found the landlord to be a credible witness and believe his submissions that the property did in fact contain asbestos, he has nevertheless violated the provisions section 51 of the *Act* because the property was not occupied by the landlord or the landlord's close family member for at least 6 months after the effective date of the notice. The tenant is therefore entitled to receive double the monthly rent, payable under tenancy agreement.

As the tenant was successful in her application, she may recover the filing fee associated with the application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,000.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

| Item | <u>Amount</u> |
|--|----------------------|
| Double the monthly rent (2 x \$1,450.00) | \$2,900.00 |
| Recovery of Filing Fee | 100.00 |
| Total = | \$3,000.00 |

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: August 2, 2017

Residential Tenancy Branch