



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$6202.82
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on September 22, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on October 22, 2014. The present rent prior to the end of the tenancy was \$1814.02 per month payable in advance on the 21st day of each month. The tenant(s) paid a security deposit of \$3600. The deposit has been returned to the Tenants.

The landlord served a 2 month Notice to End Tenancy on the Tenant(s) on August 23, 2017. The grounds set out in the Notice to End Tenancy are as follows:

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

On August 18, 2018 the Tenant(s) paid the rent for the period August 21, 2017 to September 20, 2017. After receiving the 2 month Notice to End the Tenants served a 10 day Notice to End Tenancy on the landlord on August 29, 2017 that provided that they would be vacating the rental unit on September 8, 2017.

The Tenants vacated the rental unit on September 7, 2017 and the parties conducted a Condition Inspection on that date.

The Tenant(s) provided evidence in the form of a Craigslist advertisement dated September 11, 2018 which shows that the rental unit was listed for rent with the rent of \$2300 per month.

The landlord gave the following testimony:

- She was living in Toronto at the time. She quit her job and moved out to Vancouver on October 27, 2017 and began living in the rental unit.
- She has lived in the rental unit since then along with her mother. Her mother has recently moved back to the United States.
- She continues to live in the rental unit. She testified she can provide flight tickets, hydro bills and a statement from the building manager.
- The landlord testified the tenant(s) have the telephone number of the building manager and could have contacted him to confirm this.
- She put the advertisement in Craigslist to see what the market was like in Vancouver. She testified she did not rent the rental unit.
- She offered to have the Tenant's visit her in the rental unit to prove she has moved in.

The tenants responded by saying that the placement of the Craigslist advertisement is evidence of bad faith. Further, the rental unit has a locked front door and it is not possible for them to see who has moved in.

Analysis:

The security deposit has been returned to the Tenants. The landlord has paid to the Tenant(s) the equivalent of one month rent as she is required to do under section 51(1). The Tenant(s) have withdrawn this portion of their claim.

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

The tenant(s) seek the sum of \$760.70 being reimbursement of the rent which they paid for the period September 9, 2018 to September 20, 2018 or the sum of \$760.76.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

I determined the tenant(s) are entitled to a refund of \$760.76 as provided by section 50(2) of the Residential Tenancy Act.

The tenants claim the equivalent of 2 months rent under section 51(2) of the Act alleging that steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice or that the rental unit has not been used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

Unfortunately both parties failed to provide satisfactory evidence related to this claim. The Tenant's rely on a Craigslist advertisement to prove this point. They failed to provide evidence to prove the rental unit was actually rented to a new tenant and the landlord did not move in. The landlord failed to provide documentary evidence to prove she has moved in. However, in the circumstances an arbitrator must do the best he/she can do given the limitations of the evidence.

In the circumstances I determined the tenants failed to prove they are entitled to the equivalent of 2 months rent for the following reasons:

- An applicant has the burden of proof to present sufficient evidence to prove their claim on a balance of probabilities.
- The only evidence produced by the Tenant to support this claim was a Craigslist advertisement that was list on September 11, 2017. This does not prove the rental unit was rented to a new Tenant.
- The tenants had the telephone number of the Building Manager and could have taken steps to confirm that a new tenant and not the landlord had moved in. The tenants failed to take steps to obtain this evidence. The fact it is a secure building with the front door locked does not prevent the Tenants from making the phone call.
- The landlord testified she moved into the rental unit at the end of October after quitting her job and moving back to Vancouver. She has lived in the rental unit since that time. There is insufficient evidence to disprove this solemnly affirmed testimony. I determined that moving in at the end of October is a reasonable period of time to move in.

As a result I dismissed the Tenant's application for the equivalent of 2 months rent under section 51(2).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$760.70 plus the sum of \$100 in respect of the filing fee paid for a total of \$860.70.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 17, 2018

Residential Tenancy Branch