



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 25, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by J.P., who was assisted by M.H., an advocate. Both J.P. and M.H. provided affirmed testimony. The Landlord did not attend the hearing.

On behalf of the Tenants, M.H. advised that the Application package was served on the Landlord by registered mail. An Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on May 17, 2018 (the "Amendment"), was also served on the Landlord by registered mail. According to M.H., these documents were sent to an address provided by the Landlord. Canada Post registered mail receipts were submitted in support. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Tenant and her advocate were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted into evidence. It confirmed the tenancy began on January 1, 2014. The tenancy ended on September 30, 2017. Rent was due in the amount of \$700.00 per month. The Tenants paid a security deposit that was returned to them at the end of the tenancy.

First, the Tenants claimed \$700.00 in compensation for having been served with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 27, 2017 (the "Two Month Notice"), a copy of which was submitted into evidence. The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord. According to M.H., compensation to which the Tenants are entitled under the *Act* has not been paid by the Landlord.

Second, the Tenants claimed \$1,400.00 in compensation because the Landlord did not use the rental property for the purpose stated in the Two Month Notice. J.P. testified that she returned to the rental property to check her mail and spoke with the new occupant of her rental unit. The new occupant had previously resided in another unit in the building. J.P. testified that the new occupant is neither the Landlord nor a close family member of the Landlord. J.P. testified she was advised by the new occupant that her rent is \$900.00 per month.

The balance of the Tenants' claim, or \$2,200.00, is for compensation because the Tenants have had to pay increased rent. According to J.P., the Tenants' current rent is \$1,100.00.

The Landlord did not attend the hearing to dispute the Tenants' evidence.

Analysis

Based on the unchallenged documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 51(1) of the *Act* confirms a tenant who receives a notice to end tenancy for landlord's use of property is entitled to receive an amount equivalent to one month's rent under the tenancy agreement. I accept the Tenants' evidence confirming receipt of the Two Month Notice but that compensation was not paid in accordance with section 51(1) of the *Act* and find that the Tenants are entitled to compensation in the amount of \$700.00.

Section 51(2) confirms that if 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 to end tenancy for landlord's use of property, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period, the landlord must pay the tenant an amount equivalent to double the monthly rent payable under the tenancy agreement. In this case, I accept the testimony of J.P., which confirmed that neither the Landlord nor a close family member occupies the rental unit, and find that the Tenants are entitled to compensation in the amount of \$1,400.00.

The Tenants claimed \$2,200.00 to offset the increase in rent due under her new tenancy agreement. However, I note the Tenants did not submit a copy of the new tenancy agreement into evidence to confirm the increase rent. Further, the Tenants could have continued the tenancy until November 30, 2017, the effective date of the Two Month Notice, or disputed the Two Month Notice in an attempt to have it set aside. They did not. Accordingly, I find there is insufficient evidence before me to conclude the Tenants are entitled to this compensation. This aspect of the Tenants' Application is dismissed.

Having been successful, I grant the Tenants a monetary award of \$100.00 in recovery of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$2,200.00, which has been calculated as follows:

| Claim | Amount allowed |
|-----------------------------|-----------------------|
| Section 51(1) compensation: | \$700.00 |
| Section 51(2) compensation: | \$1,400.00 |
| Filing fee: | \$100.00 |
| TOTAL: | \$2,200.00 |

Conclusion

The Tenants are granted a monetary order in the amount of \$2,200.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 4, 2018

Residential Tenancy Branch