



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord pursuant to section 51 of the *Residential Tenancy Act*, and to recover the filing fee.

The hearing was conducted by teleconference on June 13, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51 of the *Residential Tenancy Act*?
2. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant, Y.L., testified as follows. She confirmed that the tenancy began April 1, 2015.

At the time the Landlord issued the Notice the Tenants were paying \$2,700.00 per month in rent.

Y.L. stated that they moved from the rental unit on October 1, 2017. She stated that they gave the Landlord one month's notice on September 1, 2017.

Y.L. confirmed that the Landlord did not provide the Tenants with one month's rent as required by section 51(1) of the *Residential Tenancy Act*.

Y.L. stated that shortly after they moved from the rental unit she saw an ad that the Landlord posted online for the rental unit. A copy of the ad was provided in evidence and which showed that the rental unit was advertised on September 23, 2017.

The Tenant then created a fake email account for a person by the name of "C." and used this account to communicate with the Landlord about the rental unit. The Landlord responded to the email and confirmed the address of the rental unit as well as the monthly rent of \$3,600.00.

The Tenant then told the Landlord that they were not allowed to re-rent the unit to others as they issued the Notice indicating it would be occupied by family.

The Tenant confirmed that she received the security deposit on October 31, 2017, nearly a month after the tenancy ended.

In reply to the Tenants' submissions, the Landlord, H.L., testified as follows. He confirmed that he issued the Notice and then tried to rent the property to others.

He further stated that the plan was for the Landlord's mother to occupy the rental unit as of December 2017 but that she has not moved in and the rental property has been vacant since October 2017.

Y.L. stated that they did not provide a free month's rent to Tenants as he claimed they did not pay rent for September 2017.

In reply the Tenants stated that they did pay rent for September 2017.

H.L. then stated that he was not sure if they had paid as they could have deposited the amount to the other named Landlord.

Analysis

The Tenants apply for monetary compensation pursuant to section 51 of the *Residential Tenancy Act* which (at the time the Notice was issued) provided 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.

Section 50 of the *Act* allows a tenant who is in receipt of a 2 Month Notice to End Tenancy for Landlord's Use to move out earlier than the effective date of the notice, by giving at least 10 days' notice of their intention to move out. In this case, the Tenants gave a month's notice to end their tenancy.

I accept the Tenants' evidence that they did not receive the free month's rent as provided for in section 51(1); notably, the Landlord's agent was not able to conclusively dispute this claim. Accordingly I grant the Tenant's recovery of **\$2,700.00** representing one month's rent pursuant to section 51(1)

As noted above, section 51(2) provides that a Tenant is entitled to a further two month's compensation if 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 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.

In the case before me I accept the Tenant's evidence that the Landlord attempted to re-rent the rental unit at a higher price rather than having a family member move into the unit. The evidence submitted by the Tenants, including the advertisement for the unit as well as the email communication with the Tenant's "fake profile", confirms the Landlord intended to end the tenancy to pursue higher rent from other renters.

A tenancy can only be ended in accordance with the *Act*, and a Landlord must issue a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 in good faith. Section 51(2) provides tenants with compensation equivalent to two month's rent as a means to deter landlords from improperly evicting tenants simply to raise rent.

I therefore find the Tenants are entitled to the sum of **\$5,400.00** pursuant to section 51(2).

As the Tenants have been substantially successful with their application I also grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Residential Tenancy Act*.

Conclusion

The Tenants are entitled to monetary compensation in the amount of **\$8,200.00** calculated as follows:

1 month's rent pursuant to section 51(1)	\$2,700.00
2 month's rent pursuant to section 51(2)	\$5,400.00
Filing fee	\$100.00
TOTAL AWARDED	\$8,200.00

I grant the Tenants a Monetary Order in the amount of **\$8,200.00**. That Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 15, 2018

Residential Tenancy Branch