



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 22, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlords attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, including his evidence, to the Landlords by registered mail on June 27, 2018 and the Landlords confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were served the Notice of Hearing package and evidence.

The Landlords advised that their evidence was served to the Tenant by registered mail on August 31, 2018 and the Tenant confirmed that he received this package. As this evidence was served on the Tenant in compliance with Rule 3.15 of the Rules of Procedure, this evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the issuance of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”)?

- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2010 and the tenancy ended when the Tenant vacated the premises on February 28, 2018. Rent was currently established at \$1,652.00 per month, due on the first of each month. A security deposit of \$775.00 was also paid.

All parties agreed that the Notice was served to the Tenant on January 22, 2018 and the reason the Landlord checked off on the Notice was because “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 effective date of the Notice was March 31, 2018.

The Landlords referred to their written submissions and advised that in January 2018, they had planned to move from Victoria to Nanaimo to live in the rental unit and then rent out their home in Victoria. Thus, the Notice was served to the Tenant as they had every intention of moving to Nanaimo. However, soon after, a neighbour to the Victoria home constructed large chicken coops and compost bins, she cleared her property of foliage, and she began dumping garbage and raw kitchen waste on the borders of the adjoining properties. The Landlords involved the City of Victoria in an attempt to mitigate this situation and have the neighbour comply with existing by-laws; however, this was ongoing and unsuccessful. The actions of the neighbour created a situation where “It became very clear that [they] would not be able to rent the house in Victoria; the noise and smell were already unbearable.” In addition, the accompanying rat infestation rendered the selling of the house “not an option”.

At approximately mid-March, they “had no choice but to remain in Victoria to protect [their] property by continuing to push City Hall, and compelling city inspectors to stay on top of the multiple and continuing bylaw infractions next door.” However, the Tenant had exercised his right to vacate the property before the effective date of the Notice and it was too late to withdraw the Notice. The Landlords put the rental unit up for sale on April 3, 2018 and it sold within the month.

The Tenant advised that he had no intention to move until he was first made aware that the property was for sale in October 2017. As there were no comparable rental units in the area, and as he was under the impression that he would eventually have to leave the rental unit due an impending sale, he borrowed money from family to purchase an affordable home to get into the real estate market. He stated that he would still be in the rental unit if not for the potential sale of the home, and he is upset that he had to purchase a home in an expensive market because of this situation. He stated that a staging company was organized for the rental unit as soon as the Notice was given.

The Landlords advised that the timeline is important to consider as the decisions made had to be done in an expedient manner due to the unusual circumstances. They stated that the person that staged the rental unit was hired after they decided to sell the rental unit. The Landlords emphasized again that they had every intention of moving into the rental unit and this Notice was given in good faith.

Analysis

With respect to the Tenant's claim for two-months' compensation owed to him as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on January 22, 2018 and Section 51 of the Act at the time the Notice was served reads in part as follows:

51 (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.

I also find it important to note that Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (2) *Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the*

amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

When reviewing the totality of the evidence before me, at the time the Notice was served, the applicable *Act* states that once the Notice is served, the Tenant is entitled to the amount of two month's rent if the Landlord does not use the property for the stated purpose on the Notice. This provision is irrespective of whether the Notice was served in good faith as this requirement pertains to the updated legislation. Had this Notice been served after the legislation changed on May 17, 2018, Section 51(3) allows for consideration of the compensation to be excused in extenuating circumstances.

Based on the undisputed testimony of both parties, the consistent evidence before me is that the rental unit was sold in April 2018. Consequently, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose and that the Tenant has substantiated his claim that he is entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*. I find that the Tenant is entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$3,304.00**.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the monthly rent	\$3,304.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,404.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$3,404.00** 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.

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: October 23, 2018

Residential Tenancy Branch