



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on July 19, 2018, wherein the Tenant requested monetary compensation from the Landlord pursuant to sections 51(2) and 67 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference at 1:30 p.m. on November 29, 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.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to sections 51(2) and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that this tenancy began September 2015. Monthly rent was payable in the amount of \$2,420.00.

The Landlord issued a 2 Month notice to End Tenancy for Landlord's use on December 28, 2017. The reasons for the Notice were as follows:

"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 Tenant testified that she vacated the rental unit on February 7, 2018.

She further testified that she saw a "For Sale" sign on the property on March 8, 2018, and a sold sign on May 22, 2018.

The Tenant filed a Monetary Orders Worksheet in which she detailed her \$29,369.33 claim as follows:

Registered mail	\$12.55
Registered mail	\$15.88
BC Assessment search	\$21.10
BC Assessment search	\$69.30
Printing	\$2.00
Printing	\$18.50
Printing	\$7.75
Printing	\$9.25
Transpiration costs	\$200.00
12 months' rent	\$29,040.00
TOTAL CLAIMED	\$29,396.33

In response to the Tenant's claims, the Landlord testified that it was her intention to live in the home as she and her former common law spouse had separated. She stated that shortly after moving in she realized she was unable to afford the home and decided to list it for sale.

The Landlord testified that the Tenant vacated the rental unit on or about February 10, 2018, not February 7, 2018 as she testified.

She further testified that the home was listed sale on March 16, 2018, although it may have been advertised sooner. The closing date of the property sale was May 29, 2018 and the possession date was July 31, 2018.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

On the Application for Dispute the Tenant indicated she sought the sum of \$29,040.00 in monetary compensation representing compensation equivalent to 12 month's rent.

As discussed during the hearing, Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. The current version of section 51(2) provides that a tenant is entitled to *12 months* compensation, as opposed to 2 months. However as the Notice was issued on September 21, 2017, prior to May 17, 2018, the Tenant in the case before me is only entitled to compensation based on the former version of section 51(2); that is, a maximum of 2 month's rent, or \$4,840.00.

At the time the Notice was issued sections 49 and 51(2) read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

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.

I find that the Landlord occupied the rental unit following the end of the tenancy. However, the evidence confirms that just over two weeks after the effective date of the Notice she listed the property for sale. I accept her evidence that the property was listed for sale on March 16, 2018, that the closing date of the sale was May 29, 2018 and the possession date July 31, 2018.

Section 51(2) specifically references the *effective date of the notice*, which in this case is February 28, 2018.

I find that the rental unit was not used for the stated purpose, which as noted on the 2 Month Notice, was to be occupied by the Landlord, *for at least six months following the effective date of the Notice*, as at minimum, the Landlord would have had to occupy the rental unit until August 28, 2018. The evidence confirms the property was sold and the Landlord vacated the rental unit on July 31, 2018.

As such, the Tenant is entitled to the sum of \$4,840.00 representing double the monthly rent payable under the tenancy agreement.

Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. I conclude that this exclusion is intentional and includes disbursement costs such as registered mailing costs, printing and travel expenses. I therefore dismiss this portion of the Tenant's claim.

Conclusion

The Tenant is entitled to the sum of **\$4,840.00** pursuant to sections 51(2) and 67 of the *Residential Tenancy Act*. In furtherance of this, the Tenant is granted a Monetary Order in this amount. Should the Landlord not pay as required, the Tenant must serve the Monetary Order on the Landlord and may file and enforce the Order 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: November 30, 2018

Residential Tenancy Branch