



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, CNL, ERP, LRE, OLC, RR, FF

Introduction

This hearing was convened in response to an application by the tenant orally amended in the hearing. The balance of the tenant's application sought a Monetary Order pursuant to Section 51(1) of the *Residential Tenancy Act* (the Act), loss of use in respect to a parking spot, and to recover the filing fee.

Both parties attended the hearing. The landlord acknowledged receiving the tenant's application and Notice of Hearing. The parties gave testimony and were provided the opportunity to make relevant submissions, present witnesses. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present in respect to the tenant's matter.

Preliminary Matters – amendment to application

At the outset of the hearing the tenants and landlord agreed that the tenant's vacated the rental unit on or about May 18, 2019 and the landlord consequently regained de facto possession of the rental unit and do not require an Order of Possession. As a result the tenant's application to cancel the landlord's Notices to End (2) for unpaid rent and for Landlord's use of property, are hereby dismissed.

The tenant's application to control the landlord's right to enter the rental unit and their claim for emergency repairs are equally dismissed as no longer valid.

The hearing proceeded on the merits of the relevant balance of the tenant's application for the landlord to comply with the Act and a reduction of the payable rent of the tenancy agreement respecting a loss of the value of a parking space included in the rent.

Issue(s) to be Decided

Should the landlord be Ordered to comply with the Act?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy started March 15, 2019 and ended 2 months later. The monthly rent payable under the tenancy agreement was \$1300.00 due in advance on the 15th of the month. The undisputed evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice, Section 49 Notice) dated May 02, 2019 for the reason / purpose the landlord or the landlord's spouse or a close family member of the landlord or landlord's spouse. The tenant disputed the Notice, the landlord did not retract the Notice; however the tenant ultimately acted on the landlord's Notice and vacated the rental unit. The landlord testified that the tenant did not vacate the unit in strict accordance with the Notice and has not yet provided the tenant with the compensation to which the tenant is entitled for receiving a Section 49 Notice as prescribed by Section 51(1) of the Act. The tenant testified they did not withhold any rent in respect to the Notice. The tenant seeks the prescribed compensation for receiving a Section 49 Notice.

The landlord testified they have filed for dispute resolution in the recent period leading up to this hearing and for which they have a scheduled future hearing date; therefore endeavouring to have their claim offset prior to compensating the tenant, if their claim granted.

The tenant also seeks a reduction in the paid rent for a loss of a facility included in the rent under the agreement; specifically, loss of a parking spot included in rent. The undisputed testimony of both parties is that the tenants were assigned a designated spot in which to park their 1 vehicle at the rear of the residential property, and that parking for 1 vehicle is stipulated in the tenancy contract as included in the monthly payable rent. The tenant claims that during the short-lived tenancy the parking space was occupied by the landlord or their family and guests 80-90% of the time. The tenant testified that as a result they were compelled to park their vehicle on city streets which garnered parking enforcement tickets. The landlord testified they solely occupied the tenant's space 5% of the time. The tenant provided a witness (RM) whom under affirmation testified that during 3 occasions they visited the tenant the tenant's parking spot was occupied on 2 of the 3 visits. The tenant has placed an equivalent loss in the

value of the tenancy agreement for the compromised parking space in the amount of \$100.00 per month.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find the evidence in this matter is that the landlord gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use. I find the tenant did not dispute the Notice and ultimately vacated in accordance with the landlord's wishes to retake possession of the unit for their stated purpose. I find the undisputed relevant evidence is that the landlord has not provided the tenant with the prescribed compensation for them receiving a 2 Month Notice.

The tenant has claimed compensation under Section 51(1) of the Act which 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.

As a result I find the tenant has established an entitlement under **Section 51(1)** in the prescribed amount of one month's rent under the tenancy agreement of **\$1300.00**, and therefore,

I Order the landlord to comply with Section 51(1) of the Act. To perfect this Order I am granting the tenant a monetary order for the prescribed amount under Section 51(1) of the Act.

I find that it is undisputed that the tenancy agreement of this matter included in the rent a designated parking space for 1 vehicle of the tenants. I am mildly persuaded by the limited evidence of the tenant's witness in support of the tenant's claim that the parking space was unavailable to them for the majority of the 2 months duration of the tenancy. I find that in the absence of independent contrasting evidence from the landlord, and

their testimony in agreement with the tenant that the parking space was not exclusive to the tenant, I prefer the evidence of the tenants. In this respect I find it reasonable the tenant's loss in the value of the tenancy agreement for the parking space is equivalent to \$100.00 per month. Therefore, I and grant the tenant 80% of their claim, as the period of time the parking space was unavailable to the tenant, in the amount of **\$160.00**, without leave to reapply.

As the tenant was successful in their claim they are entitled to recover their filing fee of \$100.00, for a sum award of **\$1560.00**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1560.00**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's relevant application has been granted. The undecided portions of the tenant's application are dismissed, without leave to reapply.

This Decision is final and binding.

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 11, 2019

Residential Tenancy Branch