



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

A hearing was convened on November 14, 2019 in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

After confirming that the Dispute Resolution Package was served to the Landlords, the hearing on November 14, 2019 proceeded in the absence of the Landlords.

Shortly after the hearing was concluded I was advised by a Residential Tenancy Branch Manager that the Landlords had been provided with an incorrect access code and, as such, were unable to join the teleconference that was scheduled for November 14, 2019.

The hearing was reconvened on January 10, 2020, in accordance with my interim decision of November 15, 2019. This decision is based solely on the evidence submitted and the testimony provided at the hearing on January 10, 2020.

The Tenant stated that on September 10, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in September of 2019 were sent to the Landlords, via registered mail.

The Agent for the Landlord #1 stated that he is representing the Respondent with the initials "M.F." at these proceedings. He stated that he received the aforementioned documents from the Respondent with the initials "F.B.". As the Agent for the Landlord #1 stated that he is representing the Respondent with the initials "M.F." at these proceedings, the hearing proceeded in the absence of this Respondent. As the Agent

for the Landlord #1 acknowledged receiving these documents, the evidence was accepted as evidence for these proceedings.

The Landlord submitted no evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter #1

The Agent for the Landlord #1 and the Tenant agree that the tenancy agreement only names the Respondent with the initials "M.H." and the Tenant as parties to the agreement.

With the consent of both parties, the Application for Dispute Resolution was therefore amended to remove the Respondent with the initials "F.B." and the female Applicant from the Application for Dispute Resolution.

Preliminary Matter #2

In the Application for Dispute Resolution the Tenant claimed compensation of \$1,750.00. In the Monetary Order Worksheet the Tenant declared that he was seeking compensation of \$1,750.00 for "last month rental". There is no mention of a monetary claim exceeding \$1,750.00 on the Application for Dispute Resolution or in documents submitted in evidence for these proceedings.

In the Application for Dispute Resolution the Tenant refers to the rental unit being listed for sale, rather than being used by the Landlord (as was declared on the Two Month Notice to End Tenancy).

As the Tenant does not specifically declare that he is seeking compensation pursuant to section 51 of the *Residential Tenancy Act (Act)* and he does not declare that he is seeking a monetary Order in the amount that is greater than the equivalent of one month's rent, I have not considered a claim for compensation pursuant to section 51 of the *Act*.

The issues in this dispute are, therefore, limited to a claim for compensation of \$1,750.00 plus a claim to recover the filing fee. The Tenant retains the right to file another Application for Dispute Resolution for Dispute Resolution for issues not addressed in this Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Tenant entitled to the compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use?

Background and Evidence:

The Agent for the Landlord #1 and the Tenant agree that:

- the tenancy began on May 15, 2017;
- the tenancy ended on August 31, 2019;
- at the end of the tenancy the monthly rent was \$1,750.00; and
- rent was due by the first day of each month.

The Agent for the Landlord #1 stated that a Two Month Notice to End Tenancy for Landlord's Use of Property was served to the Tenant, although he cannot recall the date of service. The Tenant stated that he received the Two Month Notice to End Tenancy for Landlord's Use of Property, via email, on June 14, 2019.

The Agent for the Landlord #1 and the Tenant agree that the Two Month Notice to End Tenancy for Landlord's Use of Property declared that the rental unit must be vacated by August 31, 2019. The parties agree that the reason cited for ending the tenancy on the Notice to End Tenancy was that unit will be occupied by the landlord or the landlord's close.

The Tenant stated that he did not receive the equivalent of one month's free rent as a result of being served with the Two Month Notice to End Tenancy for Landlord's Use of Property. The Agent for the Landlord #1 stated that the Tenant requested compensation in this amount, but it was not provided.

The Agent for the Landlord #1 stated that:

- the rental unit was listed for sale in July of 2019;
- the Landlord was not certain the rental unit would sell;
- the Landlord planned to move into the rental unit if the unit did not sell;

- the Landlord believed it would be easier to sell the unit if the unit was not being occupied;
- the unit was sold in September or October of 2019; and
- the rental unit was vacant for approximately two months before the new owners moved into the unit.

The Tenant stated that he was aware the rental unit was listed for sale.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property which declared that the rental unit must be vacated by August 31, 2019 and that the tenancy was ending because the unit was to be occupied by the landlord or the landlord's close.

Section 49(3) of the *Residential Tenancy Act (Act)* authorizes a landlord who is an individual to 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. I find that the Two Month Notice to End Tenant that is the subject of these proceedings was served in accordance with section 49(3) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant vacated the rental unit on August 31, 2019, in accordance with the Two Month Notice to End Tenant that is the subject of these proceedings.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* 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 Tenant was served with a notice to end tenancy pursuant to section 49(3) of the *Act*, I find that the Tenant is entitled to compensation in accordance with section 51(1) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not receive the compensation due to him pursuant to section 51(1) of the *Act*. I therefore find that the Landlord must pay the Tenant \$1,750.00, which is the equivalent to one month's rent, pursuant to section 51(1) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,850.00, which includes \$1,750.00 pursuant to section 51(1) of the *Act* and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: January 10, 2020

Residential Tenancy Branch