



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arbutus Peak Management Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondents pursuant to section 72.

While the tenant and their agent, PF, attended the hearing by way of conference call, the landlord did not. I waited until 1:49 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, their agent, and I were the only ones who had called into this teleconference.

The tenant's agent provided undisputed testimony that the landlord was served with the original application package and evidence on November 9, 2020 by way of registered mail. The landlord provided the tracking information during the hearing. The tenant provided the tracking information in their evidentiary materials to support that the landlord was served with the amendment package by way of registered mail on December 3, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the landlord deemed served with both packages 5 days after mailing. The respondent did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This fixed-term tenancy began on November 1, 2019, and ended on October 31, 2020. Monthly rent was set at \$1,200.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$600.00 each deposit, and both deposits were dealt with and returned after a direct request proceeding was held on January 5, 2021.

The tenant filed this application for a monetary claim related to a 2 Month Notice to End Tenancy for Landlord's Use. The tenant testified that the landlord had presented her with a Mutual Agreement to End Tenancy, which she signed on September 30, 2020. The landlord wished to use the home for her own personal use. After the landlord was informed that the proper form to be used was a 2 Month Notice to End Tenancy for Landlord's Use, the landlord did serve the tenant with a proper 2 Month Notice on October 31, 2020 indicating the following reason: "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenant submitted both documents in her evidentiary materials, along with the correspondence between the parties.

The tenant testified that she was never provided compensation pursuant to the 2 Month Notice. The tenant is seeking further compensation equivalent to 12 month's rent as the landlord sold the home on November 14, 2020, as confirmed by the query the tenant did. The tenant provided the confirmation in her evidence package.

Analysis

Section 51 of the *Act* reads in part as follows:

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.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*). I find that the tenant was served with a 2 Month Notice under section 49 of the *Act* for landlord's use of

property, and did not receive the corresponding compensation from the landlord as required under the *Act*. Accordingly, I allow the tenant's monetary claim for \$1,200.00 in compensation pursuant to section 51(1) of the *Act*.

The tenant also applied for compensation under section 51(2) of the *Act*.

Section 51(2) of the *Act* reads in part 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.

I have considered the testimony and evidence provided for this hearing, and I find that the home was sold instead being occupied by the landlord or a close family member as noted on the 2 Month Notice served on the tenant.

I am not satisfied that the landlord had provided an explanation that meets the definition of extenuating circumstances. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$14,400.00.

As the tenant was successful with their claim, I find that the tenant is also entitled to recover the filing fee for this application.

Conclusion

I issue the following Monetary Orders in the tenant's favour under the following terms.

Item	Amount
1 Month's Rent Compensation for 2 Month Notice	1,200.00
Compensation Under Section 51(2) of the <i>Act</i>	14,400.00
Filing Fee	100.00
Total Monetary Order	\$15,700.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of the Orders as soon as possible. Should the landlord fail to comply with these Orders, this Orders 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: February 22, 2021

Residential Tenancy Branch