



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Reality
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under sections 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The respondent was represented by agents SW and KL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

Preliminary Issue – Service

The applicant affirmed he served the notice of dispute resolution and the evidence (the materials) in person on February 19, 2021. The respondent stated he only received the evidence. The respondent received an email from the RTB and learned about this application. The respondent received the notice of dispute resolution from the RTB on April 29, 2021 and confirmed that he understands the particulars of the claim against him and that he is prepared to proceed.

As a principle of natural justice, when a party is involved in a dispute resolution process, arbitrators must ensure that the party was informed of the claims being made against them. This includes sufficient particulars of the claims being made against them such that they know what evidence they will need to defend themselves or rebut the claims.

As the respondent confirmed he received the notice of dispute resolution on April 29, 2021, that he understands the particulars of this claim and that he is prepared to proceed, I find the respondent was sufficiently served the materials in accordance with section 71(2)(c) of the Act.

The respondent testified he served his evidence to the applicant by email sent on May 07, 2021. Later the respondent corrected himself and testified he emailed the evidence to the applicant on May 04, 2021. The applicant said he did not receive evidence from the respondent.

Rule of Procedure 3.15 states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**

(emphasis added)

Residential Tenancy Branch Regulation (the Regulation) 44 states a document served by email is deemed received on the third day after it is emailed.

The respondent's evidence is excluded, per Rule of Procedure 3.15.

Issues to be Decided

Is the tenant entitled to:

01. a monetary order for compensation under section 51(2) of the Act?
02. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 01, 2017 and ended on September 30, 2020. Monthly rent in the amount of \$2,132.00 was due on the first day of the month. The respondent collected a security deposit in the amount of \$1,000.00 and returned it. The tenancy agreement was submitted into evidence. It indicates the landlord is the named respondent in this application, acting on behalf of the owner YO.

Both parties agreed the tenant received a two-month notice to end tenancy (the Notice) dated July 21, 2020. A copy of the Notice was submitted into evidence. The effective date of the Notice was September 30, 2020. The Notice indicates the landlord is the respondent and it was signed by a representative of the respondent. It states:

Reasons for this Two Month Notice to End Tenancy (check the box that applies)

- The rental unit will be occupied by the child of the landlord or the landlord's spouse.

The tenant stated the landlord's child or spouse did not move to the rental unit. The tenant submitted into evidence an advertisement to re-rent the rental unit posted on October 08, 2020. The tenant texted the person responsible for the advertisement on October 10, 2020 and visited the rental unit:

T: Hi. I spoke with you on the phone to view the house in [redacted] tomorrow.

L: The Address is [rental's unit address]. The time is Tomorrow 10:45am.

T: Excellent. Thank you very much

L: See you

The respondent affirmed he does not know if the owner or his family moved to the rental unit, as he was an agent for the landlord until September 30, 2020. The respondent assumed the owner moved to the rental unit because the owner instructed him to serve the Notice.

Both parties agreed the tenant does not have the contact information of the owner.

The tenant submitted into evidence a monetary order worksheet dated October 13, 2020. The tenant is claiming for \$25,584.00.

Analysis

Section 01 of the Act defines landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,**
 - (i) permits occupation of the rental unit under a tenancy agreement, or**
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(emphasis added)

Based on the tenancy agreement and the undisputed testimony, I find the respondent acted as the landlord during the tenancy, per section 1 of the Act.

Section 49(3) of the Act states the landlord may end a tenancy if the landlord or his family intends to occupy the rental unit:

- (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.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Based on the undisputed testimony and the Notice, I find the Notice was served by the respondent, acting as the owner's agent, with the purpose of the owner or his family occupying the rental unit.

Based on the tenant's convincing testimony, the October 08, 2020 advertisement and October 10, 2020 text messages, I find, on a balance of probabilities, the landlord did not comply with section 49(3) of the Act by not occupying the rental unit after September 30, 2020.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$25,584.00 (12 x \$2,132.00).

As the tenant was successful, I authorize the tenant to recover the filing fee in the amount of \$100.00.

In summary, the tenant is entitled to a monetary award in the amount of \$25,684.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of \$25,684.00.

The tenant is provided with this order in the above terms and the respondent must be served with this order. Should the respondent 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: May 19, 2021

Residential Tenancy Branch