



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNC-MT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 and more time to apply pursuant to section 66;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended (“the tenant”). The tenant A.N.D. spoke on behalf of the tenants. The hearing process was explained. The tenant had opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord joined the hearing 18 minutes after the hearing started. The tenant continued providing evidence. The landlord had opportunity to cross examine the tenant, provide affirmed testimony, present evidence and make submissions. The landlord acknowledged service of the Application for Dispute Resolution and Notice of Hearing.

Both parties stated they were not recording the hearing.

Both parties confirmed the email addresses to which the Decision shall be sent.

Preliminary Issue: Tenant Application for Amendment

The tenant requested the tenant's application be amended to state as follows:

- A monetary order for one month's rent as compensation pursuant to section 49 and 67; and
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant explained that the application related to the provision by the landlord of a Two Month Notice to End Tenancy for Landlord's Use issued under section 49 and the failure of the landlord to provide one month's rent as compensation as required by section 49. The tenant inadvertently applied with respect to a One Month Notice and no such One Month Notice had ever been issued.

The parties agreed the landlord provided the tenant with a typed "Moving Notice" (not in the RTB form and referred to as the "Notice") dated August 1, 2021 and signed by the landlord, a copy of which was submitted. The Notice stated as follows (as written, emphasis added):

Moving Notice

End of tenancy notice for Unit [# and address] to the tenant named: [names of both tenants}. We want you to vacant the suite on August 31, 2021. Due to company manager and management office will be going to occupied in the suite in future. We like to give you 30 days moving notice. Please give access to the building manager to show the place to the building contractors and trade-men.

The tenant submitted copies of texts with the landlord. The tenant informed the landlord after service of the "Moving Notice" that the notice period was unlawful. The tenant requested that a notice in the proper form be served along with compensation of one month's rent as required under the Act. One of the texts from the tenant, a copy of which was submitted, stated as follows:

I checked with bc rental, even if rent is on monthly basis with no agreement, landlord has to give 2 months notice with one month compensation. Form 32! I told you that you don't know the rules.

The parties agreed the tenant vacated on October 1, 2020, paid rent in full for the rental period, and did not receive one month's rent as compensation. The landlord did not provide an additional Notice.

The Act requires that a landlord provide one month's rent as compensation when the landlord issues a section 69 Notice (landlord's use of property).

Section 51(1) states:

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.

The landlord acknowledged knowing that the tenant's application related to the Notice he issued, including a request for compensation under section 51. However, the landlord repeatedly denied the tenant was entitled to the compensation as the tenancy had ended and no such equivalent of a Two Month Notice was ever issued.

I find the landlord issued the Notice in an effort to deliberately circumvent the Act and the requirement to pay compensation. I find the landlord knew the purpose of the tenant's application. I conclude the landlord could reasonably anticipate that the tenant would amend the claim at the hearing to comply with the facts and issues as understood by both parties. Therefore, in view of the testimony and evidence, I allow the amendment under section 4.2 of the Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for one month's rent as compensation pursuant to section 49 and 67; and
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant testified as follows. The verbal monthly tenancy began on February 1, 2019 for monthly rent of \$1,300.00. The tenant paid a security deposit and pet deposit in the total amount of \$1,300.00 at the beginning of the tenancy which has been returned. The tenant testified to the Notice issued by the landlord and the circumstances of the tenancy ending as described above.

The landlord testified that the tenancy between the parties was a fixed term tenancy and the tenant was required to move out at the end of August 2021. The landlord acknowledged there was no written tenancy.

The tenant testified that the landlord demanded they sign a 1-page document dated November 18, 2021 which included a term that they not "pursue" the landlord in the RTB. A copy of the document was submitted which is signed by both the tenant and the landlord.

The tenant stated they never intended to give up their right to one month's rent as compensation and referenced their submitted texts demanding the payment from the landlord. The tenant stated they signed the document solely in order to get their deposits back.

The landlord claimed that the tenant signed the November 18, 2021 document as a final settlement of all claims the tenant may have.

The tenant requested compensation of one month's rent as section 49 compensation as well as reimbursement of the filing fee as follows:

ITEM	AMOUNT
Compensation - one month's rent	\$1,300.00
Reimbursement filing fee	\$100.00
TOTAL AWARD REQUESTED – TENANT	\$1,400.00

The landlord stated that all monetary issues between the parties were settled in the November 18, 2021 document and the tenant's application should be dismissed without leave to reapply.

Analysis

Credibility and Weight of Evidence

It is up to the party making a claim to establish it on a balance of probabilities, that is, that the claim is more likely than not to be true.

During the hearing, I found the tenant to be credible, straightforward and candid. I found that the tenant's evidence was supported in all key aspects by the tenant's affirmed testimony and documents.

On the other hand, I find that the landlord was evasive and not credible. The landlord unreasonably and without valid reasons denied the tenant's version of events, even though the facts stated by the tenant were indisputable. For example, the landlord denied there was a tenancy. The landlord also denied issuing a notice that was intended to be a notice to end a tenancy for landlord's use. I find both of these assertions unreasonable given the facts as I understand them.

I therefore find that the landlord's evidence was unreliable.

I give considerable weight to the tenant's evidence. Where their evidence conflicts, I prefer the tenant's version of events.

Compensation

The parties agreed the landlord issued a Notice; a copy was submitted as evidence. The Notice was dated August 1, 2021 and stated that the tenant must move out at the end of August 2021. The Notice said the landlord would occupy the unit. The tenant unsuccessfully tried to get the landlord to issue a proper Notice and pay one month's rent as compensation.

I find the Notice was not compliant with the Act and was likely given by the landlord in an effort to avoid the statutory requirement to pay one month's rent as compensation.

The parties agreed the tenant paid rent to vacancy and the landlord returned the deposits.

The parties agreed the landlord did not provide one month's rent as compensation according to section 51 which states 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.

I find the tenant has met the burden of proof on a balance of probabilities with respect to the their claims. I find the landlord was required to provide compensation under section 51 and did not do so.

I find that the tenant is entitled to a monetary award in the amount of one month's rent as compensation.

Summary

In summary, I grant the tenant a monetary award in the amount of \$1,300.00, being one month's rent, as well as reimbursement of the filing fee for a total award of \$1,400.00.

Conclusion

I grant the tenant a Monetary Order against the landlord in the amount of \$1,400.00. This Order must be served on the landlord. The Order may be filed and enforced in the Courts of the Province of BC.

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 20, 2022

Residential Tenancy Branch