



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Section 49 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Support and Agent, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice personally served on April 30, 2022;
- the Tenant's Notice of Dispute Resolution Proceeding package personally served on May 11, 2022;
- the Landlord's evidence package served by Canada Post registered mail (Tracking Number noted on the cover sheet of Decision) on July 13, 2022, deemed served on July 16, 2022;

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Tenant vacated

The parties confirmed that the Tenant vacated the rental unit on July 30, 2022 (Tenant's evidence), or July 29, 2022 (Landlord's evidence). The application to cancel the Two Month Notice is moot since the tenancy ended and the Landlord has possession of the rental unit. I dismiss the Tenant's application to cancel the Two Month Notice.

Issues to be Decided

1. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on November 1, 2017. Monthly rent was \$820.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord as another dispute resolution claim was initiated for its retention.

The Tenant still seeks an Order that the Landlord comply with the Act. Specifically, the Tenant is requesting his one month's rent compensation due to receiving the Landlord's Two Month Notice.

The Landlord said the reason why the one month's rent compensation was not paid to the Tenant was because he started this claim and because he had not provided the Landlord with a 10 day notice to end tenancy. The Landlord does not deny that the Tenant is entitled to the one month's rent compensation.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 51(1) of the Act states:

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.*

The Tenant testified that he vacated the rental unit at the end of July after being served the Two Month Notice by the Landlord. The Landlord does not deny that the Tenant is entitled to the one month's rent compensation for the Two Month Notice, but held off on paying the compensation because this dispute resolution claim began and the Tenant had not provided a 10 day notice to end tenancy. The Tenant seeks an Order that the Landlord comply with the Act, and I find the Tenant is entitled to the Section 51(1) compensation after receiving the Section 49 notice totalling **\$820.00**.

As this tenancy has ended based on the Two Month Notice served, I caution the Landlord to regard Section 51 of the Act regarding: **Tenant's compensation after a Section 49 notice**, which comes into play when the Landlord does not fulfil the stated purpose in their notice.

As the Tenant is successful in his claim, he is entitled to recovery of the **\$100.00** application filing fee. I grant the Tenant a Monetary Order for (\$820.00 + \$100.00) **\$920.00**.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$920.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: September 01, 2022

Residential Tenancy Branch