



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- Compensation for one month’s rent pursuant to section 51(1.1) of the Act

Landlord MD and tenant MG along with advocate IC appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated that she did not receive the tenants’ dispute notice and materials until she received an email from the tenants’ advocate on December 13, 2022 because she was out of town. The tenants’ advocate stated that she served the landlord by registered mail on June 3, 2022 and again on September 26, 2022. Both packages were returned unclaimed. The tenants’ advocate stated that both packages were sent to an address provided by the landlord on a Two Month Notice served on the tenants on December 27, 2021. The tenants’ advocate produced tracking numbers in evidence for each of the registered mail packages. RTB Policy Guideline 12 states in part:

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or

a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

No documentary evidence was provided by the landlord to support the claim that she was out of town or had other reasons why in June 2022 and in September 2022 she could not receive the packages. Based on sections 88, 89 and 90 of the Act I find that the landlord is deemed served on June 8, 2022 and again on October 1, 2022 in accordance with the Act.

Issue(s) to be Decided

1. Are the tenants entitled to one month's rent as compensation?

Background and Evidence

The tenancy commenced on April 10, 2019. At the end of the tenancy rent was \$1,600.00 per month due on the first of the month. The tenants also paid a \$500.00 security deposit which the parties agree was returned to the tenants at the end of the tenancy.

The tenants' advocate stated that the tenants received a Two Month Notice to End Tenancy ("Two Month Notice") on December 27, 2021. The effective date of the Two Month Notice was March 1, 2022. The tenants advised the landlord by email on January 19, 2022 and advised the landlord's realtor by email (at the request of the landlord) on January 21, 2022 of their intent to vacate the rental unit on March 1, 2022. The emails were provided in evidence. The tenants vacated the rental unit on March 1, 2022. The tenant MG stated that no rent was owing at the time they vacated the rental unit.

The tenant MG testified that she sent an email on February 28, 2022 to the landlord requesting one month's rent as compensation as required by the legislation. The email was provided in evidence. The tenants also provided a screenshot of outgoing phone calls which the tenants' advocate stated were attempts to reach the landlord regarding compensation. The tenants did not hear back from the landlord.

The landlord stated that she and her husband who is the other landlord separated in May 2022. They do not have communication. She believed that her husband should also have been named on the tenants' dispute application. She also stated that the tenants left garbage outside the rental unit, and that at this time could not afford to

compensate the tenants. The landlord agreed that the tenants have not been paid one month's rent as compensation.

The tenants' advocate stated that they served the dispute notice on the only landlord named on the Two Month Notice.

Analysis

RTB Rules of Procedure 6.6 states, "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.

It is not disputed that the landlord served the tenants with the Two Month Notice on December 27, 2021 with an effective date of March 1, 2022. It is also not disputed that the tenants gave notice to end the tenancy on January 19 and 21, 2022 effective March 1, 2022.

Section 51 of the Act states that tenants who receive a Two Month Notice are entitled to receive compensation in an amount equivalent to one month's rent. Further section 50 of the Act permits tenants who are in receipt of a Two Month Notice to give the landlord a notice to end the tenancy on a date earlier than the effective date stated in the Two Month Notice. That notice must be given at least 10 days before the tenants end the tenancy. Further section 50(3) states specifically:

(3) A notice under this section does not affect the tenant's right to compensation under [section 51](#) [tenant's compensation: [section 49](#) notice].

The tenants have satisfied their onus to establish that they are entitled to compensation of one month's rent under the Act. They have further established, based on undisputed evidence, that they have not received the compensation.

The tenants' application for compensation for one month's rent in the amount of \$1,600.00 is granted.

Conclusion

The tenant is granted a monetary order for \$1,600.00 constituting one month's rent. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 7, 2023

Residential Tenancy Branch