

DECISION

Dispute Codes

MNDC, FF

Introduction

This is the Tenants' application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenants testified that they served the Landlord with the Notice of Hearing documents by registered mail sent November 5, 2011. The Tenants provided a copy of the registered mail receipt and tracking number in evidence.

Preliminary Matters

I noted that the Landlord had provided a letter to the Residential Tenancy Branch on January 19, 2012, seeking to adjourn the matter. Therefore, I was satisfied that the Landlord was served with the Notice of Hearing documents.

The matter was scheduled to commence at 11:00 a.m. I explained to the Tenants that we normally allow 10 minutes past the scheduled time for the Hearing for the parties to sign into the conference. I asked the Tenants if the Landlord had attempted to get their consent to adjourn the Hearing and they replied that they had asked the Landlord to sign into the Hearing and make his application at the Hearing.

Rule 6 of the Residential Tenancy Rules of Procedure provides for the ways in which a matter can be rescheduled or adjourned, as follows:

6.1 Rescheduling of a dispute resolution proceeding by consent more than three days in advance

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained

If a party wants to request that a dispute resolution proceeding be rescheduled to

another date **because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control**, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the Dispute Resolution Officer to reschedule the dispute resolution proceeding by:

a) submitting to the Residential Tenancy Branch, **at least three (3) business days before the dispute resolution proceeding**, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or

b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the Dispute Resolution Officer to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding.

(emphasis added)

In this case, the Tenants did not provide written consent to adjourn the Hearing. The Landlord did not provide a document requesting the adjournment **at least three business days before the Hearing**. "At least" excludes the day of the Hearing and the day the document is received. Therefore, the latest day for providing such a document was January 18, 2012. In his letter the Landlord wrote, "my wife has had a major surgery and I am not prepared for Tuesdays hearing." The Landlord did not include sufficient detail in his letter (for example, he did not indicate when the surgery took place, what he required to do to be prepared for the Hearing, or why he could not send an agent to represent him). The Landlord did not have an agent sign into the Hearing to represent him and describe the circumstances that were beyond his control to attend the proceeding. Therefore, I dismissed the Landlord's request for an adjournment and the matter proceeded in the Landlord's absence.

At 11:12 a.m., after the Tenants had finished providing me their testimony, but before I had provided my decision, the Landlord signed into the Hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order in compensation under the provisions of Section 51(2) of the Act?

Background and Evidence

The Tenants gave the following testimony and documentary evidence:

- On July 27, 2011, the Landlord gave them a *Two Month Notice to End Tenancy for Landlord's Use of Property*. The Landlord told them that his brother and their mother would be moving into the rental unit. A copy of the Notice was provided in evidence.
- The Tenants did not dispute the Notice and moved out of the rental unit on September 30, 2011.
- In October, 2011, they noticed an ad in two popular on-line sites indicating that the entire top floor of the residential property (of which the rental unit was a part) was for rent. The Tenants provided copies of the ads in evidence.
- On October 13, 2011, the Tenants visited the neighbour to the rental unit, who told them that a woman and her two sons had moved into the rental unit. The Tenants testified that the woman was not the Landlord's mother and that neither of the sons was the Landlord's brother.
- The Tenants paid \$625.00 per month for rent and seek a monetary award in the amount of \$1,250.00.

The Landlord gave the following testimony:

The Landlord testified that he intended to move his brother and mother into the rental unit because his brother needed care after hip surgery and injuring his arm. He stated that his brother recovered from his injuries much faster than was expected and decided not to move in to the rental unit with his mother. He stated that his mother no longer wished to live in the rental unit either.

Analysis

Section 51(2) of the Act provides:

Tenant's compensation: section 49 notice [landlord's use of property]

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, **must** pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

(emphasis added)

The effective date of the end of the tenancy was September 30, 2011. Based on the testimony of both parties, I find that the Landlord did not use the rental unit for the purposes stated on the *Two Month Notice to End Tenancy for Landlord's Use of Property*, and that the Tenants are entitled to compensation pursuant to the provisions of Section 51(2) of the Act in the amount of **\$1,250.00**.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenants a Monetary Order in the amount of **\$1,300.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims 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: January 24, 2012.

Residential Tenancy Branch