



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The tenant and a witness attended the hearing and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") on each landlord by way of registered mail, neither landlord appeared. Evidence submitted by the tenant includes two sets of tracking numbers for the registered mail. The Canada Post website informs that one of the packages was "successfully delivered" and signed for by the landlord before being returned to the tenant. As well, the Canada Post website informs that the other package was signed for by the landlord, however, still "refused by recipient" before being returned to the tenant.

The address for service used by the tenant is the service address provided by the landlords on the "2 month notice to end tenancy for landlord's use of property," which was served by the landlords on the tenant by date of February 1, 2012.

Further, the tenant served the landlords by posting the hearing package on the door of the rental unit, as well as on the door of the landlords' residence in Bellingham, WA.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began in the basement portion of the house in April of 2008. Monthly rent was \$900.00 and a security deposit of \$450.00 was collected. Effective on or about September 1, 2008, the tenant relocated to the upstairs portion of the house where

monthly rent was initially \$1,200.00. Thereafter, with the passage of time the monthly rent upstairs became \$1,450.00.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlords issued a 2 month notice to end tenancy dated February 1, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is April 1, 2012, and the reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, the tenant vacated the unit on March 31, 2012. The tenant testified that pursuant to section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**, she obtained the "equivalent of one month's rent payable under the tenancy agreement" by way of withholding payment of rent for March 2012.

The tenant testified that the final disposition of the security deposit was not addressed between the parties at the end of tenancy.

When the tenant filed her application for dispute resolution on July 29, 2012, she claimed that the landlords had listed the unit for sale in May 2012, and that neither they nor any close family member had occupied the unit after the end of her tenancy. Subsequently, the tenant testified that the unit was sold in August 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant and her witness, I find that the landlords were served with the hearing package(s) in compliance with section 89 of the Act which addresses **Special rules for certain documents**.

As previously noted, section 51 of the Act speaks to **Tenant's compensation: section 49 notice**. In part, this section provides as follows:

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.

Once again, based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that neither of the landlords nor any of their close family members undertook to occupy the unit after the tenant was required to vacate the unit effective April 1, 2012. Further, despite the reason identified on the notice in support of its issuance, the unit was ultimately sold. Accordingly, pursuant to section 51 of the Act, I find that the tenant has established entitlement to a monetary order* under section 67 of the Act in the amount of \$2,950.00,* which is comprised as follows:

\$2,900.00: "double the monthly rent payable under the tenancy agreement" (2 x \$1,450.00)

\$50.00: filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$2,950.00. Should it be necessary, this order may be served on the landlords, filed in the 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: October 18, 2012.

Residential Tenancy Branch