

Dispute Resolution Services

Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord was served with Notice of this hearing, sent via registered mail on May 14, 2013. A copy of the registered mail receipt was provided as evidence. The landlord confirmed that she did not receive the Notice of hearing until late last week, as she had not been checking her mail. The landlord was prepared to proceed and declined an opportunity to adjourn.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to 1 month's rent, in accordance with section 51 of the Act?

Is the tenant entitled to the filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on November 11, 2012, rent was \$700.00 per month, due on the 1st day of each month. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the tenant signed a Notice to end tenancy issued by the landlord, dated March 31, 2013, indicating the home had been sold and that the purchaser wanted possession. The tenant signed agreeing to vacate by June 1, 2013.

The landlord confirmed receipt of an April 14, 2013 written notice from the tenant, indicating she would vacate effective May 1, 2013. A copy of this notice was supplied as evidence.

The landlord confirmed that the tenant was not provided with compensation equivalent to 1 month's rent, as the tenant did not remain in the unit for the final month of the tenancy and gave less than thirty days notice, as required by the tenancy agreement that had been signed.

<u>Analysis</u>

Section 51(1) of the Act provides:

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.

(Emphasis added)

There was no dispute that the tenancy was ended in accordance with a notice given, ending the tenancy as the result of a sale of the property. I find that the method of ending the tenancy met the requirements of section 49(5) of the Act.

The tenant was entitled to end the tenancy earlier than the date provided by the landlord and she did so, as provided by section 50 (1) of the Act:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies. The tenant paid rent for April 2013 and remained in the unit until the end of that month, so no rent must be refunded. The term of the tenancy agreement requiring thirty days notice was in breach of the Act; parties cannot contract out of the legislation.

The landlord believed that as the tenant did not remain in the rental unit for the final month of the tenancy that she would then not be entitled to compensation. However, the Act provides a tenant compensation that is the equivalent to 1 month's rent and allows a tenant to end the tenancy earlier, if 10 days written notice is given.

Therefore, as the tenancy was ended in accordance with section 49 of the Act, I find that the tenant is entitled to compensation in the sum of \$700.00, which is the equivalent of 1 month's rent.

As the tenant's application has merit I find that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant is entitled to compensation in the sum of \$750.00.

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: May 29, 2013

Residential Tenancy Branch