



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord pursuant to sections 50 and 51 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on April 4, 2017. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on October 5, 2016 by registered mail. The Tenant testified that she had the registered mail tracking number and receipt at home, but was making her call from work and was therefore not able to provide this information. I provided her with the Branch's fax number and asked her to send in a copy of the receipt and tracking number when she returned home. I confirm that on April 5, 2017 I received this information and I considered it in making my Decision. I have also provided the tracking number on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant/Landlord was duly served as of * and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

Background Evidence

The Tenant testified that the tenancy began April 15, 2013. Monthly rent was payable in the mount of \$1,210.00. At the time the Tenant received the 2 Month Notice to End Tenancy for Landlord's Use of Property the Tenant paid rent in the amount of \$1,318.35. The Tenant confirmed that this amount was as a result of an illegal rent increase and that her rent was actually \$1,210.00. She confirmed that the Landlord refunded her overpayment on October 2, 2016.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 19, 2016.

On September 12, 2016 the Tenant sent the Landlord a 10 Day Notice pursuant to section 50 of the *Residential Tenancy Act* indicating she would be moving out October 2, 2016. This Tenant provided a copy of the registered mail receipt and tracking number, as well as the Landlord's signature confirming delivery of her letter.

The Tenant confirmed that she vacated the rental unit on October 2, 2016.

Analysis

Based on the Tenant's undisputed testimony and evidence and on a balance of probabilities I find as follows.

Section 51(1) of the *Residential Tenancy Act* provides that a Tenant who receives a 2 Month Notice to End Tenancy under section 49 is entitled to compensation equal to a month's rent. For greater clarity I reproduce section 51(1) as follows:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Section 50 allows a tenant to end the tenancy early when they have received a 2 Month Notice and reads as follows:

Tenant may end tenancy early following notice under certain sections

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.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

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

I find pursuant to section 49, that that the Tenant was entitled to compensation equivalent to her monthly rent, namely \$1,210.00. I find that she gave notice to ender her tenancy early, pursuant to section 50 and was therefore able to end her tenancy early on October 2, 2016. As noted in section 50(3), her notice does not affect her right to compensation pursuant to section 51.

The Tenant is required to pay for the 2 days in October for which she was in occupation of the rental unit such that she is entitled to compensation in the amount of **\$1,131.91**; calculated as follows:

\$1,210.00 (monthly rent)
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<u>\$78.06 (\$39.03 (daily rate based on 31 days in October) x 2)</u>
\$1,131.93.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of **\$1,131.91** pursuant to sections 49, 50, 51 and 67 of the *Residential Tenancy Act*. The Tenant must serve the Monetary Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) 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: April 05, 2017

Residential Tenancy Branch