



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC

### Introduction

This hearing was scheduled for 9:00 a.m. on August 14, 2008 to hear the tenant's application for a Monetary Order for money owed for damage or loss under the Act, regulation or tenancy agreement. Both parties appeared at the hearing of August 14, 2008. The landlord requested an adjournment of that hearing due to a family emergency. The tenant consented to an adjournment. The hearing was adjourned until 9:00 a.m. on September 12, 2008. Both parties were in attendance at the reconvened hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Whether the tenant is entitled to compensation equivalent to two month's rent under section 51(2) of the *Residential Tenancy Act* (the Act).

### Background and Evidence

Upon review of the evidence before me, I find that the tenancy commenced in November 2006 and monthly rent was \$900.00 including utilities. The tenant was served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) on November 19, 2007. The Notice had an effective date of January 31, 2008 and indicated that the reason for ending the tenancy was that

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

The tenant testified that she vacated the rental unit by January 31, 2008 and confirmed she had received compensation of one month's rent. The tenant testified that on February 16, 2008 she personally observed a "for rent" sign in front of the rental unit. The tenant also testified that she located rental advertisements for the rental unit on two websites and she provided those as evidence. The rental advertisements provided as evidence were printed in May and July 2008 and indicate that the rent was increased to \$1,200.00 per month including utilities.

The landlord testified that in December 2007 her father became very ill and she decided that she should stay in Alberta to take care of her family members. The landlord testified that she did not inform the tenant of the change in her situation and did not offer the tenant an opportunity to continue with the tenancy due to other problems with the tenancy. The landlord testified that she was receiving complaints about the way the tenant was maintaining the rental property and parking of vehicles and/or a boat and was aware of the police attending the rental property.

The landlord testified that the rental unit remained vacant until August 2008 causing her to lose a total of seven months of rent including the tenant's compensation already paid to the tenant. Upon enquiry, the landlord admitted that advertisement of the rental unit began in February 2008 and explained that a new tenancy did not start until August due to personal difficulties she was experiencing that were related to her father's illness.

### Analysis

Upon review of the evidence, I am satisfied that the Notice served upon the tenant was a Notice issued under section 49 of the Act. Where a tenant receives a Notice under section 49, the tenant is entitled to compensation under section 51 of the Act. Section 51 of the Act provides the following:

### **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.**

[my emphasis]

As the tenant confirmed that she received compensation under section 51(1) it is only before me to decide whether the tenant is entitled to compensation under section 51(2) of the Act. Clearly, compensation under section 51(2) is in addition to compensation under section 51(1).

Based on the testimony and other evidence, I am satisfied that the landlord did not take steps to accomplish the stated purpose for ending the tenancy and the landlord did not use the rental unit for the stated purpose for at least six months. Section 51 is clearly intended to compensate a tenant for the loss of their home. The tenant in this case did lose her home in the rental unit because of the issuance of a Notice under section 49 of the Act. While I appreciate that the personal circumstances for the landlord were very difficult, the landlord's personal situation does not disentitle the tenant to compensation provided by section 51 of the Act. Therefore, there is no basis to exempt the landlord from the application of section 51(2) due to personal circumstances of the landlord.

The issues of concern cited by the landlord are irrelevant in determining whether the tenant is entitled to compensation under section 51 of the Act. The Act provides a mechanism to landlords that wish to end a tenancy for cause under section 47 of the Act. However, I make no finding as to whether there was cause to end the tenancy as the landlord ended the tenancy for landlord's use by issuing a Notice issued under section 49 of the Act. Therefore, I must apply section 51 of the Act, as it is written.

As the tenant was successful in proving that the landlord did not use the rental unit for the reason stated on the Notice issued under section 49 of the Act, I provide the tenant a Monetary Order in the amount of \$1,800.00 which is calculated in accordance with section 51(2) of the Act. The tenant must serve the Monetary Order upon the landlord and may enforce it in Provincial Court (Small Claims) as an Order of that court.

#### Conclusion

The tenant is provided with a Monetary Order in the amount of \$1,800.00.

September 12, 2008

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Date of Decision