



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNDC OLC FF O

## Introduction

This hearing dealt with an application by the tenants for monetary compensation pursuant to sections 51(1) and 51(2) of the *Residential Tenancy Act* (“the Act”) and an order that the landlord comply with the Act. One of the tenants, one of the landlords and counsel for the landlord attended the teleconference hearing.

At the outset of the hearing, the landlord stated that they were not disputing the portion of the tenants’ claim regarding compensation under section 51(1); that is, the tenants were entitled to compensation equivalent to one month’s rent after having received the notice to end tenancy for landlord’s use. The landlord further stated that they did not dispute the tenants’ entitlement to recovery of the \$100 filing fee for the cost of their application. The landlord disputed the tenants’ entitlement to further compensation equivalent to two months’ rent under section 51(2).

## Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to two months’ rent, pursuant to section 51(2) of the Act?

## Background and Evidence

The tenancy began on March 1, 2006. The monthly rent at the end of the tenancy was \$2074. On July 26, 2008, the tenants received an email from the landlord’s agent, in

which the agent informed the tenants that the landlord was planning to move back into the house and would be serving the tenants with notice to vacate the house at the end of September. On July 31, 2009 the landlord's agent served the tenants a letter which stated, in part, as follows: "This letter will serve as notice to terminate the month to month tenancy at the end of September 2008. Vacate possession will be as of October 1<sup>st</sup> 2008 @ 8:00 am."

On August 1, 2008 the tenants emailed the landlord and asked to be served with a proper eviction notice. The landlord did not send the tenants a notice to end tenancy in the valid form. The landlord and tenant continued to communicate with each other in regard to the end of the tenancy, and in a letter mailed to the landlord on August 18, 2008, the tenants stated, in part, as follows:

... we have accepted the notice [to end tenancy] as valid, that you wish to resume your use of the house and acknowledge that the tenancy ends by October 1<sup>st</sup> 2008. This letter is to let you know that we wish to exercise our right (under the residential Tenancy Act section 50 subsection 1a) to give you ten days notice and quit [the rental unit address].

The tenants vacated the rental unit on September 1, 2008.

The landlord stated that they intended to move back into the rental unit but were unable to move back to Vancouver as they had anticipated. The landlord then decided to do more extensive renovations to the rental unit, and the renovations were still ongoing at the time of the hearing.

The landlord submitted that they intended in good faith to occupy the rental unit, and that when they discovered they would not be able to occupy the unit, they started within two months after the end of the tenancy to instead carry out renovations. Additionally, the tenants' letter ought to be interpreted as the tenants' consent to the end of the tenancy. Therefore, the landlord should not be required to pay the two months' compensation.

### Analysis

Section 51 of the Act sets out that if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or 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 must pay the tenant an amount that is the equivalent of double the monthly rent.

In this case, although the landlord did not give the tenants a notice within the approved form, the tenants accepted the notice and acted on it as a notice under section 49 of the Act. Further, the landlord acknowledged that because the tenants acted on the landlord's notice, the tenants were entitled to compensation under section 50 of the Act. I therefore find that the landlord purported to end the tenancy as set out under section 49 of the Act.

I do not accept the landlord's argument that the tenants' letter amounted to their consent to the end of the tenancy other than pursuant to the landlord's notice to end tenancy. The tenants' letter clearly confirmed that they accepted the landlord's notice to end tenancy as valid, not that they consented to withdrawal of the notice. Once a notice to end tenancy has been issued, the landlord cannot unilaterally withdraw the notice.

The landlord clearly indicated at the time of giving the tenants the notice, as well as on subsequent occasions, that they intended to occupy the rental unit. The landlord did not occupy the rental unit as they had planned, and instead began renovating the unit. The landlord's argument regarding good faith does not apply to section 51 of the Act. I find that the landlord did not use the rental unit for the stated purpose, even by the time of the hearing, nearly 10 months after the effective date of the notice. I therefore find that the tenants are entitled to compensation equivalent to two months' rent.

### Conclusion

I find that the tenants have established a claim for compensation equivalent to one month's rent in the amount of \$2074 and further compensation equivalent to two months' rent in the amount of \$4148. The tenants are also entitled to recover the \$100 filing fee for this application. I grant the tenants an order under section 67 for the balance due of \$6322. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 3, 2009.