



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDC

### Introduction

This hearing was initially convened on August 9, 2012 in response to the tenant's application of June 8, 2012, for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and / or were represented at that hearing. However, as the landlord's agent, who was also the landlord's realtor, claimed that he had only recently received the tenant's hearing package, and as the landlord (owner) was understood to have left the country, the landlord's agent requested an adjournment. The tenant agreed to the request and the hearing was adjourned.

On the occasion of this rescheduled hearing, the tenant, the landlord's agent and a witness for the landlord's agent attended and gave affirmed testimony.

### Issue(s) to be Decided

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

### Background and Evidence

There is no written tenancy agreement in evidence for the tenancy which began in June 1996. By the end of tenancy monthly rent was \$1,250.00, and it was due and payable in advance on the first day of each month.

It is understood that the landlord who was the owner of the property when the tenancy began, sold the property to the landlord named in this application sometime in August 2011. Thereafter, the tenant's evidence is that in September he gave the new landlord's agent 3 post dated rent cheques for October, November and December 2011.

Following this, pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 30, 2011. A copy of the notice was submitted in evidence. The landlord's

agent (the realtor) is specifically named on the 2 month notice as the landlord's agent, the agent signed the notice on behalf of the landlord, and the agent served the 2 month notice on the tenant. The service address for the landlord which is shown on the 2 month notice is in care of the agent's business address; it is this same business address which was used by the tenant in his service of the application for dispute resolution and notice of hearing on both, the landlord and the agent.

The date shown on the notice by when the tenant must vacate the unit is December 31, 2011. 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.

The tenant vacated the unit by the end of December 2011, and the disposition of rent for December was resolved pursuant to section 51 of the Act, which speaks to **Tenant's compensation: section 49 notice**.

In November 2011, between the time when the 2 month notice was served and the time when the tenant vacated the unit, the tenant's evidence is that there were several showings of the unit. The thrust of the tenant's application is that neither the landlord, nor the landlord's spouse, nor any of their close family members ever moved into the unit. Accordingly, the tenant argues that the 2 month notice was not issued in good faith. In the result, the tenant seeks compensation "equivalent of double the monthly rent payable under the tenancy agreement" pursuant to section 51 of the Act.

Further to the showings in November 2011, the tenant reached the above conclusion on the basis of observations he made of the unit during drive-bys over several months after he vacated. In particular, he describes a photograph taken of the unit in June 2012 showing "yard overgrown, no garbage removed from move out." The tenant also testified that he has determined the unit was again sold on or about March 28, 2012, and during the hearing the landlord's agent presented no information to the contrary.

The witness for the landlord's agent claimed to be an acquaintance of the landlord's. He testified that while he does not know the landlord's specific address, he understands that the landlord lives in Beijing. The witness also testified to his understanding which is that the landlord occupied the unit for some period of time after the tenant vacated.

The landlord's agent testified that while he himself does not know the specific whereabouts of the landlord, he had been told that the landlord returned to China for

reasons related to business. Further, the landlord's agent testified that he had heard the landlord may have moved out of the unit in June or July 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](http://www.rto.gov.bc.ca)

Section 1 of the Act defines "**landlord**," in part, as follows:

- (c) a person, other than a tenant occupying the rental unit, who
  - (ii) exercises any of the rights of a landlord under a tenancy agreement of this Act in relation to the rental unit;

Section 51 of the Act, as above, provides in part 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 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.

Following from all of the above, on the basis of the identification and signature of the landlord's agent on the 2 month notice, the agent's collection of rent cheques from the tenant, and the agent's service of the 2 month notice on the tenant, I find that the agent is a "landlord" within the meaning of that term under the Act, and in the circumstances of this dispute.

Residential Tenancy Policy Guideline # 2 addresses "Good Faith Requirement when Ending a Tenancy," and provides in part:

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intended to do what they said on the Notice to

End Tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

Based on the documentary evidence and testimony of the parties, in summary I find that the landlord's agent has failed to meet the burden of proving that the landlord "truly intended to do what they said on the Notice to End Tenancy." I find the agent's knowledge of the landlord's intentions, movements and whereabouts to be speculative rather than conclusive.

I further find that I am unable to give much weight to the testimony of the witness, as his relationship with the landlord appears more casual than close, such that his knowledge of the landlord's intentions and comings and goings is more superficial than definitive.

In short, I find on a balance of probabilities that neither the landlord, the landlord's spouse, nor any of their close family members occupied the unit for at least 6 months after the end of tenancy on December 31, 2011. Rather, I find it more likely that notice was issued in order to further the landlord's intention which was to resell the unit.

In the result, I find that the tenant has established entitlement to compensation of \$2,500.00 which is the "equivalent of double the monthly rent payable under the tenancy agreement" (2 x \$1,250.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$2,500.00**. 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: September 13, 2012.

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Residential Tenancy Branch