



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation in accordance with section 51 of 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 Matters

The parties agreed that only the agent for the landlord was named as a respondent. The landlord also agreed that she had been informed of the hearing and that she had signed the tenancy agreement with the tenant. Therefore, the application was amended to include the landlord and the landlord's agent.

### Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$2,400.00, in accordance with section 51(2) of the Act?

### Background and Evidence

The tenancy commenced on September 1, 2012, rent was \$1,200.00 due on the 1<sup>st</sup> day of each month.

There was no dispute that at the end of February 2013 the landlord gave the tenant 2 months' notice ending the tenancy as the landlord's daughter was going to move into the unit.

The tenant vacated the unit at the end of March 2013. There was no dispute that the tenant was given the required compensation; equivalent to 1 month's rent.

Condition inspection reports were not completed; the landlord expected the tenant to walk through the unit on the day the tenant vacated and returned the keys, but the tenant did not do so. No date or time was formally set for a move-out inspection.

The landlord said that the unit had been new when the tenancy started, that the tenant left the unit in a moldy state and that it required cleaning. As a result of the condition of the home the landlord's daughter could not reside there; she and her son are sensitive to mold.

There was no dispute that on April 5, 2013 the home was advertised for rent and that the unit was rented effective May 1, 2013. A copy of the rental ad was supplied as evidence. The landlord possessed the unit during the month of April, while it was being advertised.

During the hearing the tenant agreed that the landlord is entitled to retain \$265.46 for an unpaid water bill. The tenant confirmed this could be deducted from any amount found owed to the tenant.

The parties agreed that the pet and security deposits were applied to money owed to the landlord for the purchase of furniture.

### Analysis

Section 51(c) of the Act provides:

*(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*

After the tenant moved out, the landlord possessed the unit; her daughter did not occupy the home. Almost immediately the landlord advertised the unit for rent and successfully located new occupants for May 1, 2013. These facts were not in dispute.

Therefore, as the unit was not occupied by the landlord's daughter and as it was not used for the purpose of occupation for a period of at least 6 months, I find, pursuant to

section 51(c) of the Act, that the landlord must pay the tenant double 1 month's rent; \$2,400.00; less the agreed deduction \$265.46 for the water bill.

If the unit had required some rehabilitation the landlord was free to do so and to then occupy the unit. The evidence before me calls the landlord's submission that her daughter could not reside in the unit, into question, as the unit was found to be fit for rental and was quickly re-rented.

As the application has merit I find that the tenant is entitled to the \$50.00 filing fee cost.

Based on these determinations I grant the tenant a monetary Order in the sum of \$2,184.54. 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 \$2,400.00; less the agreed deduction for a water bill in the sum of \$265.46.

The tenant is entitled to the \$50.00 filing fee cost.

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: July 08, 2013

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Residential Tenancy Branch

