



# Dispute Resolution Services

Page: 1

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 a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Subsequent to the tenant's original filing of her application, the tenant amended the *style of cause* for the landlord. The amended *style of cause* is shown on the face sheet of this decision.

### Issue(s) to be Decided

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

### Background and Evidence

The unit which is the subject of this dispute is 1 of what are 12 units located within a strata condominium complex. Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 17, 2011 to April 30, 2012. The agreement provides that at the end of the fixed term the tenant will vacate the unit. Despite this, after April 30, 2012, the tenancy continued on a month-to-month basis. Monthly rent of \$750.00 was due and payable in advance on the first day of each month, and a security deposit of \$375.00 was collected.

In August 2012 the unit was sold. Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the new landlord issued a 2 month notice to end tenancy dated August 28, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 31, 2012. Reasons shown on the notice in support of its issuance are as follows:

The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant did not dispute the notice within the 15 day period available to her after receiving it, pursuant to section 49(8) of the Act. Thereafter, the tenant vacated the unit effective September 15, 2013.

Pursuant to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**, the tenant received compensation which was "the equivalent of one month's rent payable under the tenancy agreement" of \$750.00, in addition to repayment of her security deposit of \$375.00 [total: \$1,125.00]. In the circumstances of this dispute, it is understood that the above compensation was actually paid by the original landlord.

Subsequent to vacating the unit the tenant has determined that at the time when the 2 month notice was issued, the landlord did not in fact have "all the necessary permits and approvals required by law," and that it was not until September 27, 2012 when "applications for demolition permits were submitted" for the complex. The tenant also claims that the unit was re-rented for a period of time after she vacated. Further, the tenant notes that the complex has not been demolished and that some of the other units remain occupied.

In her application the tenant seeks compensation in the amount of "the equivalent of double the monthly rent payable under the tenancy agreement," pursuant to section 51(2) of the Act which provides 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 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.

During the hearing the landlord acknowledged that not all the necessary permits and approvals required by law had been acquired at the time when the 2 month notice was issued. The landlord also acknowledged that the unit was re-rented for a limited period of time subsequent to the tenant vacating. The landlord testified that the unit is presently unoccupied and is unfit for occupation. The landlord further testified that had events which have transpired since issuance of the 2 month notice been anticipated, the 2 month notice would not have been issued and the tenancy would likely have continued in full force and effect.

Details of events leading up to and surrounding the issuance of the 2 month notice are set out in the landlord's written submission. In summary, these include but are not limited to, the following:

- In 2011 the Strata passed a resolution to proceed with the demolition and reconstruction of the building.
- The [landlord] bought the unit from [the previous landlord] specifically for the purpose of furthering the project to demolish and rebuild the Strata.
- In the early summer of 2012 the Strata directed all of the owners of units in the Strata to vacate and empty their units, in the expectation of demolishing the building in the Fall of 2012. The [landlord was] informed by the Strata that the Strata building was to be demolished in the fall of 2012. This was a development that had been anticipated by the [landlord].
- At the time that the [2 month notice] was delivered, it was the firm intention of the [landlord] to demolish the Unit, and the intention of the ownership of the Strata to demolish the entire building.
- The [landlord] delivered the [2 month notice] in order to comply with the resolution passed by the Strata to demolish the building, and with the direction from the Strata to all owners of the Strata, including the [landlord], to vacate their units.
- The [2 month notice] was not delivered for any unlawful or improper purpose.
- At about the same time that the [2 month notice] was delivered, most of the other units of the Strata were being vacated and emptied, by their owners and/or tenants, in anticipation of demolition of the building. By the end of September 2012, only units #11 and #12 were still occupied, as all other units

had been cleared out. The owners of units #11 and #12 had been directed by the Strata to vacate their units, but had not complied with this direction.

- The Strata subsequently requested, on repeated occasions, that the owners of Strata units #11 and #12 have those units vacated. These owners responded by informing the Strata that they had agreements with their tenants such that those tenants could be required to vacate those units on only a few days prior notice. These owners advised the Strata that they wished to maintain rental income until *"the last minute."* The [landlord of the subject unit] did not have any right to evict [the tenant] on short notice, and therefore, in order to comply with the direction of the Strata to vacate the Unit, provided the [2 month notice] to [the tenant].
- Subsequent to the delivery of the [2 month notice], unforeseen and unanticipated complications arose that have delayed the demolition of the Unit and the rest of the Strata building.
- ....there have been complications with respect to the confirmation of a contract with the contractor that had been tentatively retained. Eventually, the Strata terminated its relationship with the original contractor and entered into negotiations to retain [a] new contractor.
- ....there have been unexpected legal complications and significant delays in the drafting and execution of a joint venture agreement between the owners of the Strata. Although a draft joint venture agreement had been circulated and tentatively agreed to in early 2012, the joint venture agreement has not yet been finalized and executed by all current Strata owners.
- ....there have also been new complications and delays with respect to arranging the financing for the construction of the new Strata building.
- By the late fall of 2012, as a result of the delays and complications detailed above, and with winter approaching and the close of the construction season, it eventually became apparent to the [landlord] that it was not going to be possible to demolish the Strata and the Unit in the immediate future. In order to mitigate some of the financial loss that was being incurred as a result of these unexpected delays, the [landlord] decided to make efforts to find a new tenant for the Unit. The Unit was rented out for roughly 1 month in early 2013.

- A further complication that has developed, subsequent to the delivery of the [2 month notice] is that there has been extensive vandalism to several of the Strata units, including the [subject unit]. This vandalism occurred on or about the evening of March 1, 2003. As a result of the vandalism, asbestos has been discovered in the building, which has necessitated specialized remediation. WorkSafe BC has become involved and has ordered that asbestos remediation regulations must be observed. This has further delayed the demolition and reconstruction project. The Strata has had to spend time to enter into a contract with an asbestos remediation company.
- ....the [2 month notice] was delivered in good faith, and not for any improper purpose. When the [2 month notice] was delivered, the [landlord] fully believed, based on information provided to the [landlord] by the Strata, that the entire Strata building was going to be demolished in the near future. The fact that Strata and the Unit have not been demolished since the delivery of the [2 month notice] has been for reasons that were completely unanticipated by the [landlord] and beyond the control of the [landlord].

The thrust of testimony given by the landlord during the hearing revolved around the essential points set out above.

### 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)

Residential Tenancy Policy Guideline # 2 speaks to “Good Faith Requirement when Ending a Tenancy,” in part as follows:

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, I find that the landlord has met the burden of proving there was “good faith intent” to end the tenancy for the reason(s) identified on the 2 month notice. While the necessary permits and approvals had not in actual fact been acquired at the time when the 2 month notice was issued, I find that it would be contrary to the intent of the applicable legislation, and contrary to the principle of administrative fairness, to order that further compensation be paid to the tenant as a

result of circumstances which I find had not been foreseen by the landlord, and which could not have reasonably been anticipated by the landlord when the 2 month notice was issued. I also note that the landlord has suffered a net loss of rental income compared to what would likely have been the case had the tenancy continued uninterrupted. Accordingly, I find that the tenant's application must fail.

### Conclusion

The tenant's application is hereby dismissed.

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: August 26, 2013

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Residential Tenancy Branch

