



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, FF

### Introduction

This telephone conference call hearing concerns 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. The tenant attended and gave affirmed testimony.

The hearing was originally scheduled for May 09, 2014. While the tenant attended and gave affirmed testimony before another Arbitrator on that occasion, the landlord did not participate. Following the conclusion of the hearing it is understood that "MMHZ," the person assisting the landlord, contacted the Branch and claimed that a technical difficulty had prevented her and the landlord from participating in the hearing. In the result, the hearing was re-scheduled to commence at 10:00 a.m. on May 29, 2013. I am informed by Branch staff that on May 14, 2014 the Branch telephoned the tenant, the landlord, and the person assisting the landlord, in order to inform them that the hearing had been re-scheduled.

Further, I am informed by Branch staff that on May 14, 2014 the Branch mailed a "Notice of a Re-scheduled Dispute Resolution Hearing" to the tenant and to the landlord. During the hearing the tenant confirmed her receipt of the "Notice of a Re-scheduled Dispute Resolution Hearing." Despite all of the foregoing, neither the landlord nor "MMHZ" attended this re-scheduled hearing.

### Issue(s) to be Decided

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

### Background and Evidence

There are no written tenancy agreements in evidence before me. The tenant testified that a year - long fixed term tenancy began on October 15, 2011 with the original owner of the property. It is understood that during that year the property was sold to the

landlord who is a party to this dispute. Following the end of the fixed term tenancy, the tenant entered into a month-to-month tenancy agreement with the new landlord.

Monthly rent of \$2,100.00 was due and payable in advance on the 15<sup>th</sup> day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$500.00 were collected.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 13, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is December 15, 2013. The reason shown on the notice in support of 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.

Subsequently, the tenant vacated the unit on November 14, 2013, and the security and pet damage deposits were repaid in full.

Thereafter, the tenant claims that on January 21, 2014 she determined that the landlord had listed the property for sale on December 10, 2013, or "26 days after [she] moved out." On January 23, 2014 the tenant filed an application for dispute resolution, seeking compensation "that is the equivalent of double the monthly rent payable under the tenancy agreement" pursuant to section 51 of the Act.

In his written submission the landlord claims that he moved into the unit on November 29, 2013, and that for "some special family reasons" he decided to list the house for sale. He claims that after being served with the tenant's hearing package on February 04, 2014, he became aware of a requirement that he use the property for the purpose stated on the 2 month notice for at least 6 months. The landlord claims that on February 04, 2014 he therefore removed the house from listing for sale, and that he currently still lives there.

The tenant argues that the landlord did not remove the house from listing for sale but, rather, the listing simply expired and was not apparently renewed.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, 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 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.

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

### **GOOD FAITH REQUIREMENT**

A claim of good faith requires honestly of intention, with no ulterior motive. The landlord must honestly intend to use the rental unit for the purpose stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy, or
- a local government document allowing a change to the rental unit (e.g., building permit).

If evidence shows that the landlord's purpose in issuing a Notice to End Tenancy is for a reason other than the one stated on the Notice to End Tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. The Residential Tenancy Branch may find that the landlord had a dishonest purpose even if that dishonest purpose was not the primary motive for ending the tenancy.

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, the affirmed / undisputed testimony of the tenant, and the applicable legislation and guideline, as above, I find on a balance of probabilities that the landlord's actual purpose in issuing a notice to end tenancy was for reasons other than the one stated on the notice to end tenancy. Notwithstanding the landlord's claim that he currently resides in the unit, I find it unlikely that he first came to a decision to list the property after such a relatively short time following the end of tenancy. Further, in his written submission the landlord has failed to identify any compelling "special family reasons" for listing the property, versus using it for the reason stated on the notice to end tenancy. In short, I find that the landlord has failed to meet the burden of proving good faith intent. Accordingly, I find that the tenant has established entitlement to a claim of \$4,250.00, as follows:

\$4,200.00: [ $\$2,100.00$  (monthly rent)  $\times$  2 (statutory entitlement)]  
\$50.00: *filing fee*

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$4,250.00**. Should it be necessary, this order may be served on the landlord, 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: May 29, 2014

---

Residential Tenancy Branch

