



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD O  
                             MNSD MNDC OLC O

### Preliminary Issues

Upon review of the Tenants' application for dispute resolution the Tenants noted in the Details of Dispute section the following:

*... return of deposit \$475.00, + \$950 x 2 Feb. & Mar. \$1900 as per 2 month notice of compensation. Landlord is selling property & Tore house down. Total Monetary Order Request \$2375 [sic]*

Based on the aforementioned I find the Tenants had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to obtain compensation regarding the 2 Month Notice. Therefore, I amended their application, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on May 13, 2014 to obtain a Monetary Order to keep all or part of the security deposit; and for other reasons.

The Tenants filed on May 05, 2014 to obtain a Monetary Order for: the return of their pet and or security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement (as amended above); to obtain an order to have the Landlord comply with the Act, regulation or tenancy agreement, and for other reasons.

The hearing was conducted via teleconference and was attended by the Landlord S.D., the Landlord's translator, the Tenant A.W., and the Tenants' legal advocate. The

Landlord and Tenant affirmed that they were representing themselves and their co-landlord L.D. and co-tenant L.E. respectively. Therefore, for the remainder of this decision, terms or references to the Landlords and Tenants importing the singular shall include the plural and vice versa.

The parties gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Have the Landlords proven entitlement to a Monetary Order?
2. Have the Tenants proven entitlement to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties entered into a verbal tenancy agreement that began on February 1, 2012. The Tenants were required to pay rent of \$950.00 on the first of each month and on or before February 1, 2012, the Tenants paid \$475.00 as the security deposit. The parties attended dispute resolution on March 19, 2014, and the Landlord was granted an Order of Possession effective April 1, 2014, based on an undisputed 2 month Notice and a Monetary Order for \$1,514.51 for unpaid utilities.

The Tenant testified that they vacated the rental property on March 29, 2014, in accordance with the Order of Possession, after paying the full rent for February and March 2014. The Tenant submitted evidence which included a copy of their Intent to Rent Form and the two rent cheques for February and March 2014.

The Tenant submitted that he left his forwarding address written on a piece of paper he left on the stove inside the rental unit. He argued that they verbally requested the Landlord pay them the 1 Month compensation owed for being issued the 2 Month Notice but that the Landlord refused because the Tenants had not yet paid the Landlord the \$1,514.51 that was awarded in the March 19, 2014 hearing. The Tenants now seek the compensation equal to one month's rent of \$950.00 for being served the 2 Month Notice.

The Tenant submitted that the Landlords did not use the property for the reasons the 2 Month Notice was issued, as per the copy provided in their evidence. It was undisputed that the 2 Month Notice was issued January 6, 2014, stating the following reasons:

*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 pointed to the photographs he provided in evidence which displayed pictures of the rental house taken between March 21, 2014 and April 26, 2014, and pictures taken April 29, 2014 which show that the house had been torn down. The Tenant argued that the house was torn down and subsequently sold; therefore, it was not used for the landlord's family to move in so they are entitled to compensation equal to two month's rent.

The Landlord testified that they were not provided the Tenant's forwarding address in writing, the keys were not returned, and they were not paid the money owed to them from the monetary order granted in the March 19, 2014 Decision. As per the foregoing, the Landlords seek to retain the security deposit.

The Landlord argued that it was their intention to move into the rental property; however, when they regained possession of the property they found the "house looking ugly" so they decided to tear it down and started to build a new house for the Landlords to move into. The Landlord stated that the house is still under construction and it will be occupied by her family upon completion.

In closing, the Tenant stated that he assumed the property was sold because there was a for sale sign on the front lawn during his tenancy. He confirmed that he did not have evidence that the property had been sold and he did not submit evidence to prove he left his forwarding address inside the rental unit.

The Tenants' Advocate summarized the Tenants' submission stating that the rental property was not used for the reason which the Landlord was granted a legal Order of Possession and the property was not occupied by the Landlord's family for the six consecutive months following the eviction, as required by the Act. Therefore, the Tenants are entitled to compensation as requested.

### Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

### **Landlord's Application**

Section 38(3) of the Act stipulates that a landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

In this case it was undisputed that the Landlords had been granted a monetary order for \$1,514.51 in the March 19, 2014 hearing, and at the end of the tenancy this amount remained unpaid. Accordingly, I find the Landlords were entitled to keep the security deposit to apply it to the monetary award, leaving a balance owing to the Landlords for the monetary order of **\$1,039.51** (\$1,514.51 - \$475.00 security deposit - \$0.00 interest), pursuant to section 38(3) of the Act.

### **Tenants' Application**

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The undisputed evidence is that the Tenants were served with a 2 Month Notice to end tenancy for landlord's use of property and rent of \$950.00 per month was paid in full until the end of the tenancy March 31, 2014. Accordingly, I find the Tenants are entitled to compensation pursuant to section 51(1) of the Act of **\$950.00**.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends in good faith to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

The statutory requirement to obtain an Order of Possession under section 49 of the Act requires that the landlord prove that they truly intend to do what the reasons were that they indicated on the 2 Month Notice. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Notwithstanding the fact that section 49 of the Act provides that a landlord may end a tenancy for the reason that the landlord has all necessary permits and approvals required by law to demolish the rental unit, the Landlords did not issue the 2 Month Notice for this reason. Rather, the Landlords were granted an Order of Possession effective April 1, 2014, based on the 2 Month Notice where the Landlords listed the following reason for landlord's use of the property:

*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.*

Neither the Landlords nor any of their family members occupied the rental property in the six months following the Tenants vacating. Rather, within 3 weeks of the Tenants vacating, the Landlords had suddenly acquired the required permits and began tearing down the rental house.

Section 51 (2) of the Act provides that in addition to the amount payable under subsection (1), if 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 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.

Based on the above, I accept the Tenants' submissions that the Landlords did not use the property, for at least 6 months, for the stated purpose listed on the 2 Month Notice and for which they were granted the Order of Possession. Accordingly, I award the Tenants **\$1,900.00** compensation, an amount equal to two month's rent (2 x \$950.00), in accordance with section 51(2) of the Act.

### Conclusion

The Tenants have been awarded a Monetary Order for **\$2,850.00** (\$950.00 + \$1,900.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As noted above, the balance owed to the Landlords on the Monetary Award issued March 19, 2014, is \$1,039.51. The Landlords may offset this amount against the award granted to the Tenants, leaving a balance due to the Tenants of \$1,810.49 (\$2,850.00 - \$1,039.51).

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 08, 2014

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Residential Tenancy Branch

