



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 15, 2014, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony. The Tenant provided documentary evidence that the Landlord was served notice of this application and this hearing by registered mail on July 16, 2014. The Tenant submitted that the Canada Post website confirmed that the package had been delivered to the Landlord on July 29, 2014. The Tenant stated that her evidence was served upon the Landlord by registered mail on December 1, 2014 and was signed received by the Landlord on December 2, 2014.

Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with section 89 of the Act, and I continued in the Landlord's absence.

### Issue(s) to be Decided

Has the Tenant proven entitlement to a monetary order?

### Background and Evidence

The Tenant submitted evidence that she entered into a tenancy agreement with the Landlord that commenced on July 7, 2009. The Tenant was required to pay rent of \$2,200.00 on the first of each month.

The Tenant testified that the rental unit building as very unique as it consisted of three floors and her rental unit took up the entire third floor. She indicated that the construction of the first floor had changed often during her tenancy, where the Landlord had taken down and erected walls. Initially the first and second floors had tenancies based on single room occupancies (SRO) with shared common spaces for those tenants and the third floor was a completely self-contained rental unit which the Tenant rented. Then rooms were added to the first floor to create an office, one apartment, and with SRO on the first and second floor. Based on this design and constant changes the

Tenant stated that they did not have any reason to doubt the Landlord's good faith in issuing them the 2 Month Notice to end tenancy.

The Tenant provided in evidence, a copy of a 2 Month Notice to end tenancy dated May 31, 2013 that was effective July 31, 2013 which provided the following reason(s) for ending the tenancy:

- *The landlord has all 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 notice had a hand written note on the top of the first page which states as follows:

*Sorry you guys but the reno will be hugely messy! & add two more bedrooms on the 3<sup>rd</sup> floor [sic]*

The Tenant testified that they moved out of the rental unit July 31, 2013, in accordance with the Notice, and they were issued a cheque for \$2,200.00 as compensation for being issued the 2 Month Notice. She argued that she returned to the rental property in May 2014 and found out that no renovations or changes had been made. Rather, the Landlord simply propped open the entrance door into the 3<sup>rd</sup> floor rental suite and entered into tenancy agreements for SRO of the bedrooms on that floor.

The Tenant stated that she called the municipal office and was told that no permits had been issued for this property in 2013 or 2014. The Tenant provided photographs in her documentary evidence of the condition of the rental unit when she occupied the unit in 2009 – 2013 and photos which were taken on May 24, 2014, after she moved out to prove no renovations had been completed. As a result, she is seeking compensation of \$4,400.00 which is equal to two month's rent.

### Analysis

Section 49(6)(b) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and 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.

Section 51 of the Act stipulates that if a landlord issues a 2 Month Notice to end tenancy for landlord's use pursuant to Section 49 of the Act, then the tenant will be entitled to compensation as follows:

- 1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

In this case the undisputed evidence was that the Tenant vacated the rental unit July 31, 2013, after being served a 2 Month Notice, pursuant to section 49(6)(b) of the Act, and the Landlord did not have all necessary permits to renovate the property and in fact, no renovations or construction was completed. Accordingly, I grant the Tenant her application for a monetary order for **\$4,400.00**.

The Tenant has been successful with her application; therefore, I award her recovery of her **\$50.00** filing fee.

### Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$4,450.00** (\$4,400.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court and be 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: December 19, 2014

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Residential Tenancy Branch

