



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 16, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; 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 Landlord, the Tenant, and the Occupant. Each party gave affirmed testimony and confirmed receipt of evidence served by each 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.

Upon review of the Tenant's application for Dispute Resolution, I noted that the Tenant described her claim in the Details of the Dispute as follows:

*We were evicted for landlord's possession but the downstairs tenants moved in and the rented the downstairs to someone else within 20 days! The landlord never lived there and he told us the other tenants were also moving out. [Reproduced as written]*

At the time the Tenant filed her application she submitted documentary evidence which consisted of a copy of a 2 Month Notice to end tenancy issued May 1, 2014. Based on the aforementioned, I conclude that the Tenant had filed her application seeking compensation equal to two month's rent, as described on page two of the 2 Month Notice, as the rental unit had not been used for the reasons listed on the Notice.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent, if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Tenant did not file an amended application and simply submitted a list in her documentary evidence outlining additional items being claimed. Accordingly, I declined to hear any claims which were not identified on the original application. The remainder of the Tenant's monetary claim is dismissed, without leave to reapply.

#### Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation equal to two month's rent?

#### Background and Evidence

The undisputed evidence was that the Tenant entered into a fixed term tenancy agreement that began on October 1, 2003 and switched to a month to month tenancy after one year. Rent of \$1,350.00 was due on or before the first of each month and on or before October 1, 2003 the Tenant paid \$675.00 as the security deposit. On May 1, 2014, the Landlord served the Tenant a 2 Month Notice to end tenancy and the Tenant vacated the property by June 27, 2014, in accordance with the Notice.

The Tenant's rental unit was described as being the upper level of a single detached home that had a separate self-contained basement suite. The basement suite had been occupied by different tenants under a separate tenancy agreement.

A copy of the 2 Month Notice was submitted into evidence and both parties confirmed that the Notice had been issued pursuant to section 49 of the *Residential Tenancy Act (the Act)* listing the following reasons for issuing the Notice:

- *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 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 Tenant and Occupant submitted evidence that the Landlord did not use the property for the reasons that were listed on the 2 Month Notice. They asserted that the Landlord has not moved into the rental unit, rather the downstairs tenants moved into their rental unit in the upper level on July 20, 2014. They stated that when they returned to the home to pick up their mail they did not see any signs of construction or permits posted. As such, the Occupant and the Tenant argued that at the time they were evicted, the Landlord did not have the required permits; therefore, they should be compensated for having to move when the unit was used for the reason they were evicted.

In support of their application the Tenant and Occupant submitted documentary evidence which included, among other things, copies of: their written statement; emails between the parties; and written statements from three neighbors of the rental property.

The Landlord testified that he gave the tenants from the basement suite permission to move possessions and occupy the upstairs unit shortly after the Tenants moved out. He argued that there was construction being done in the downstairs unit, the basement suite, which did not require the issuance of permits.

The Landlord indicated that he has been out of the country and that when he returned in August 2014 and met the basement suite tenant in person, he decided to hire him to manage the property and to conduct the renovations. He pointed to his documentary evidence which included a copy of the building permit that was issued to his agent on January 30, 2015 for the structural work planned for the Tenant's upper floor rental unit. He stated that he did not know when the application for the building permit had been filed and argued that the construction involved structural work for the removal of walls and flooring.

In closing, the Tenant and Occupant pointed out that by his own submissions the Landlord admitted that neither he nor a family member moved into their rental unit, it was the downstairs tenant who moved in. Furthermore, at the time they were evicted the Landlord did not have the required permits to do the construction, thus proving their application.

Each party provided their correct service address, as listed on the front page of this Decision.

## Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 51(2) of the *Act* provides that 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In regards to the Tenant's claim for \$2,700.00, (2 x \$1,350.00) pursuant to section 51(2) of the *Act* as listed above, I find the undisputed evidence confirmed that the rental unit had not been used for the reasons stated on the Notice within the first six months of the Tenant being evicted. Rather, the rental unit was used as follows:

The Tenants were evicted effective July 1, 2014 and the basement suite tenants occupied the rental unit on or about July 20, 2014. Therefore, the rental unit was not 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.

Notwithstanding the Landlord's submission that the basement suite was undergoing renovations, the undeniable evidence was that the building permits for the upper floor renovations, the rental unit in question and subject to the 2 Month Notice, were not issued until January 30, 2015, seven months after the Tenant was evicted. Therefore, at the time the 2 Month Notice was issued on May 1, 2014, the Landlord did not have 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; and the repairs or renovations were not done within the first six months after the Tenant was evicted.

Based on the above, I conclude that the Tenant has met the burden to prove that steps had 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, and the rental unit was not used for that stated purpose for at least 6 months. Accordingly, I grant the Tenant's application and award her **\$2,700.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

### Conclusion

The Tenant has been awarded a Monetary Order for **\$2,750.00** (\$2,700.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Tenant does 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

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: April 15, 2015

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Residential Tenancy Branch

