



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, FF, O

### Introduction

This hearing dealt with the tenant's amended application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The landlord did not attend this hearing, although I waited until 1011 in order to enable the landlord to connect with this teleconference hearing scheduled for 0930. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with the dispute resolution package on 23 March 2015 by registered mail. The tenant provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The tenant's amended application sets out that she seeks compensation in the amount of \$1,650.00:

Item	Amount
Subsection 51(1) Compensation	\$550.00
Subsection 51(2) Compensation	1,100.00
<b>Total Monetary Order Sought</b>	<b>\$1,700.00</b>

The tenant sets out that she claims for compensation for sexual harassment and loss of quiet use and enjoyment. The tenant has not set out the quantum of her claim.

#### Preliminary Issue – Further Amended Application

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The tenant stated that she had sent in a further amendment to her application on 27 April 2015. I had yet to receive the request by the time the hearing commenced.

At the teleconference hearing, the tenant read me the content of the letter. The letter stated that the tenant had taken her compensation pursuant to subsection 51(1) of the Act by not paying rent for April 2015. The tenant sought to amend her monetary claim to reduce her monetary claim by \$550.00.

As there is no prejudice to the landlord by allowing the tenant to reduce the amount of her claim, I allowed the amendment.

At the hearing, I explained to the tenant that if I canceled the landlord's 2 Month Notice the legal remedy would be that the tenancy would continue. The tenant explained that she intends to leave the rental unit at the end of the month. The effective date set out on the 2 Month Notice is 30 April 2015.

The tenant withdrew her application to cancel the 2 Month Notice under the factual stipulation that she disputes that the landlord meets the legal requirements to issue a notice pursuant to section 49.

The tenant withdraws the application to cancel the 2 Month Notice in order to preserve her rights to compensation under that notice. As there is no undue prejudice to the landlord in allowing the tenant's request, I allowed it.

The corrected effective date of the 2 Month Notice appears to be 31 May 2015. **The tenant may wish to consider what, if any, compensation she is entitled to pursuant to subsection 50(2).**

Preliminary Issue – Premature Claim

The tenant claims for compensation pursuant to subsection 51(2) of the Act:

- (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.

[emphasis added]

As the effective date of the 2 Month Notice has not yet passed, the tenant's claim for compensation pursuant to subsection 51(2) is premature.

This portion of the tenant's claim is dismissed with leave to reapply.

Preliminary Issue – Sufficiency of Particulars

The tenant sets out in her monetary order worksheet that she seeks an unknown amount of compensation for loss of quiet enjoyment and sexual harassment.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

In this case, the tenant failed to include the quantum of compensation she was seeking from the landlord. Without this information, the landlord is not properly informed of the case against him. As such, I dismiss this portion of the tenant's claim with leave to reapply.

Conclusion

The tenant's claim to cancel the 2 Month Notice is withdrawn. The tenant's claim for compensation pursuant to subsection 51(1) is withdrawn.

The tenant's claim for compensation pursuant to subsection 51(2) is dismissed with leave to reapply.

The tenant's claim for compensation for sexual harassment and loss of quiet use and enjoyment is dismissed with leave to reapply.

As the tenant has been unsuccessful in this application she is not entitled to recover her filing fee from the landlord.

The tenant did not articulate any "other" remedy at the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 29, 2015

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Residential Tenancy Branch

