



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNSD

### Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$4863.59. The applicant is also requesting recovery of his \$50.00 filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

### Background and Evidence

The applicant testified that he took over the tenancy from a friend of his and at that time he paid both the rent and a \$240.00 security deposit to the landlord.

The applicant further testified that on January 10, 2015 the landlord gave him a two month Notice to End Tenancy for landlord use, stating that his cousin would be moving into the rental unit. He moved as a result of that notice, not realizing that the landlord could not end the tenancy to have cousin move-in.

The applicant further stated that on January 23, 2015 he gave the landlord a ten-day written notice that he would be moving out by February 2, 2015 and he vacated on that date. His forwarding address was on that ten-day notice.

The applicant further testified that the landlord has never returned his security deposit, did not give him the one month free rent compensation required under the act, and moved a cousin into the rental unit.

The applicant further testified that during the tenancy on three occasions the landlord burst into his rental unit without permission, and frequently stared through the Windows thereby interfering with their enjoyment of the rental unit.

The applicant is therefore requesting a monetary order as follows:

Return of security deposit double	\$480.00
One-month compensation required for two month Notice to End Tenancy	\$550.00
Two months compensation required for failing to comply with the two month Notice to End Tenancy	\$1100.00
Compensation for wrongful entry	\$300.00
Compensation for loss of quiet enjoyment	\$500.00
Moving costs	\$1000.00
Propane for move	\$219.99
New cell phone cost has had to change service provider	\$179.20
Minutes for new cell phones	\$134.40
Transportation from Surrey to Trail	\$400.00
Filing fee	\$50.00
Total	\$4913.59

The landlord testified that the tenant never paid a security deposit, the original security deposit was paid by the tenants friend, however when he moved out it was returned to him. The landlord further stated that you can see on the receipts supplied by the tenant that the signatures are not even the same and it looks as though I line has been added to show a security deposit.

The landlord testified that he did give the tenant a two month Notice to End Tenancy because the tenant would not accept a handwritten notice he given stating that he wanted his cousin move-in.

The landlord further testified that the tenant moved out early giving him only 10 days notice, and he has supplied a copy of that letter.

The landlord further testified that the tenant has never paid any rent for the months of December 2014, were January 2015.

The landlord also testified that at no time did he burst into the tenants unit without permission, whenever you wanted to speak to the tenant he either phoned him or knocked on his door.

The landlord further stated that they did not invade the tenant's privacy and stare in the windows, and, in fact, the tenants had curtains on the windows and you can't see in even if you wanted to.

The Landlord therefore asked that this full claim be dismissed.

In response to the landlord's testimony the tenant testified that he did pay the December 2014 and January 2015 rent, however the landlord did not issue a receipt for those payments.

### Analysis

It is my finding that the applicant has not met the burden of proving that he ever paid a security deposit to the landlord. I have reviewed the receipts provided by the applicant, and it does appear that an extra line may have been added to the receipt that states that a security deposit was paid. I therefore will not allow the tenants claim for return of double the security deposit.

The landlord has admitted that he gave the tenant a two month Notice to End Tenancy for landlord use, and therefore the landlord was required to compensate the tenant the equivalent of one month rent; however the landlord claims that the tenant has not paid any rent for both the months of December 2014, and January 2015. The tenant claims to have paid rent for those months; however has provided no evidence in support of that claim, and therefore it's my finding that the tenant has not met the burden of proving that he has paid rent for either the months of December 2014 or January 2015. I therefore will not allow the tenants claim for one-month compensation as it appears he is already withheld that rent.

I will however allow the tenants claim for compensation equivalent to two months rent because the landlord did not comply with the Residential Tenancy Act and have a family member move into the rental unit. The landlord had cousin move into the rental unit, and cousin is not considered a family member for a section 49 Notice to End Tenancy.

Section 49 of the Residential Tenancy Act states:

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Therefore pursuant to section 51(2) of the Residential Tenancy Act the landlord is required to compensate the tenant double the equivalent of one month rent. Rent was \$550.00 per month and therefore the landlord must pay \$1100.00 to the tenant.

I deny the tenants claim for loss of enjoyment, and for landlord entry of the rental unit because the tenant has not met the burden of proving this portion of his claim. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

I also deny the tenants claims for moving costs, propane costs, cell phone costs, cell phone minutes, and cost to move himself and his girlfriend from Surry to Trail. The tenant is claiming these costs because the landlord did not comply with the reasons given on the Notice to End Tenancy, however as stated above the compensation required for failing to comply with the reasons given is the equivalent of two months' rent, and nothing further.

Having allowed \$1100.00 of the tenants claim, I will also allow recovery of the \$50.00 filing fee.

### Conclusion

I have issued an order for the landlord to pay \$1150.00 to the tenant. The remainder of this claim is dismissed without leave to reapply.

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 22, 2015

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Residential Tenancy Branch

