



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the tenant's agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The landlord advised me that her correct legal name is not shown on the tenant's application. The parties did not raise any objections to the error being corrected and this has now been amended.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started originally on July 18, 2010. The tenancy was renewed on August 01, 2011 and again on August 01, 2012 for further one year terms. This last agreement specifies that this is a fixed term tenancy which ended on July 31, 2013. Thereafter, no new agreements were put in place and the tenancy continued as a month to month tenancy. Rent for this unit at the end of the tenancy was \$1,200.00 per month. Rent was due on the 1<sup>st</sup> of each month.

The tenant testified that on June 26, 2014 the landlord served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property. This Notice has not been provided in documentary evidence but the landlord confirmed that the Two Month Notice was served and had an effective date of August 31, 2014. The reason given on the Notice was that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant testified that he filed an application to cancel the Notice because the landlord had been trying to sell the unit and was not going to be moving into the unit. At the hearing held on September 09, 2014 the Arbitrator preferred the landlord's evidence that she was going to move into the unit and the tenant's application to cancel the Notice was unsuccessful. The landlord was issued with an Order of Possession with an effective date of October 31, 2014.

The tenant testified that in accordance with s. 51(a) of the *Act* the tenant gave the landlord a 10 Day Notice to End Tenancy on September 20, 2014 to end the tenancy on September 30, 2014. The tenant testified that prior to this there had been an altercation in the unit where the landlord had informed the police that the tenant had assaulted her sister. The police took no action against the tenant. The tenant referred to his documentary evidence in the form of a letter from a Police Office regarding this matter. The landlord then issued the tenant with a One Month Notice to End Tenancy for Cause on September 08, 2014. The tenant filed another application to dispute that Notice; however, at the hearing held on October 31, 2014 the Arbitrator withdrew the tenant's application as he had already vacated the unit.

The tenant testified that despite having moved from the rental unit on September 30, 2014 the tenant should still be entitled to receive compensation for the Two Month Notice equal to one month Rent. The tenant paid rent for September and would have received a rent free month for October had the tenant not vacated the rental unit early. The tenant therefore seeks to recover compensation for the Two Month Notice of \$1,200.00.

The tenant testified that the landlord had the unit listed for sale for the year prior to the end of the tenancy. The tenant had over 60 viewings of the property; however, the landlord took the unit off the market for two months after she served the tenant with the Two Month Notice. The tenant testified that shortly after the tenant vacated the rental unit the landlord put the unit back on the market and the unit was sold on December 14, 2014. The tenant testified that the landlord did not move into the rental unit and had only wanted the tenant out of the unit so she could sell it. Due to this the tenant seeks compensation equivalent to two months' rent in accordance with s. 51(2) of the Act.

The landlord disputed the tenant's claims. The landlord testified that she had served the tenant with a Two Month Notice and did intend to move into the rental unit. Because of the incident of assault that occurred on September 07, 2014 the landlord served the tenant with a One Month Notice to End Tenancy for Cause. It was the Arbitrator at the hearing on October 31, 2014 who deemed that the tenant's application to cancel the One Month Notice was withdrawn. The landlord testified that she did not consider that the One Month Notice was cancelled. Due to this the landlord testified that the One Month Notice remained in force and the Two Month Notice became null in void.

The landlord testified that she does not dispute that she sold the unit on December 14, 2014 but testified that it was always her intention to move into the unit. The landlord testified that in her mind after she had issued the One Month Notice she could do what she wanted with the unit. The landlord testified that she decided to stay in the town she lived in and then put the unit up for sale. The landlord testified that the reason the unit was taken off the market after the Two Month Notice was issued was because the unit had not sold. When the landlord put the unit back on the market she used a new realtor.

The tenant's agent asked the landlord if it was always her intention to move into the unit why was it on the market for a year. The landlord responded that it is her prerogative to move in to the unit or sell it. The tenant asked the landlord if she falsified the alleged incident of assault. The landlord responded that she did not falsify it or inflate it. The police told the tenant's agent to not talk to the landlord and that the incident was a civil matter and the police would not proceed.

The tenant testified that he moved out because of the Two Month Notice. He filed his second application to dispute the One Month Notice but as he had already moved out he only called in to the hearing to defend himself against the landlord's accusation. The tenant referred again to the letter from the Police Officer in which he has stated that "there is no police investigation taking place any further to any assault on anyone in the

file. Any alleged assault lacks evidence to present a charge to Crown Counsel..." The matter of the One Month Notice was not heard at that hearing.

The landlord declined to cross examine the tenant.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The parties were informed in the decision dated September 09, 2014 that the tenant was entitled to compensation equal to one month's rent pursuant to s. 51 of the Act when a Two Month Notice was served upon the tenant and further compensation equal to two months' rent if the landlord does not use the rental unit for its intended purpose.

The landlord has argued that as she served the tenant with a One Month Notice after the Two Month Notice was served then this makes the Two Month Notice null in void. The tenant argued that the allegations given on the One Month Notice were not proven. The police stated that the landlord's alleged assault lacks evidence and no charges were made against the tenant.

I am not satisfied from the evidence presented that by the serving of the One Month Notice would automatically make the Two Month Notice null in void. The landlord is not entitled to contract out of the *Act* by serving another Notice to end the tenancy to avoid paying compensation to the tenant for the Two Month Notice. While I accept that a hearing was held to dispute the One Month Notice; but as the tenant had vacated the rental unit prior to that hearing the Arbitrator withdrew the tenant's application; there is insufficient evidence from the landlord to show that the allegations of assault would have been upheld. The letter from the police officer clearly states that the landlord's allegations lack evidence and the video provided for this hearing does not show that an assault took place. While I do not intend to make a finding here on the One Month Notice I will mention that the landlord would have had the burden of proof to show that the reasons given on the One Month Notice were valid to end the tenancy had the matter been heard at the hearing held on October 31, 2014..

I have considered all the evidence before me and find that there is sufficient reason for me to have concerns about the reason given on the Two Month Notice in light of the fact that the landlord had attempted to sell the unit for the past year, the unit was taken off the market when the tenant was issued with the Two Month Notice and then after the tenant vacated the unit was placed back on the market and sold.

S. 51 of the Act clearly states that:

**51** (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.*

This information was also provided to the parties in the decision made after the hearing that took place on September 09, 2014. There is insufficient evidence to show that the Two Month Notice would become null in void and I refer the parties to the Residential Tenancy Policy Guidelines #11 which states, in part, that:

*A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.*

*Also, as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.*

Consequently it is my decision that the Two Month Notice was still in force and effect and the tenant is entitled to compensation equivalent to one month's rent pursuant to s. 51(1) of the Act to an amount of **\$1,200.00**.

Furthermore, I find the landlord did not use the rental unit for the intended purpose as stated on the Two Month Notice 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 beginning within a reasonable period after the effective date of the Notice.

Consequently, I find the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. The tenant is therefore entitled to recover compensation of **\$2,400.00**.

As the tenant's application has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord, pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,650.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 07, 2016

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Residential Tenancy Branch

