



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC, OLC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he sought monetary compensation from the Landlord pursuant to section 51(b) of the *Residential Tenancy Act*, as well as moving expenses and recovery of the filing fee.

Both parties appeared at the hearing. The Tenant appeared on his own behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 Matter

The Landlord, I.W., confirmed that the other named Landlord, A.H., was in fact her former property manager. Pursuant to section 64(3)(c) I amend the Tenant's Application for Dispute Resolution to accurately name the Landlord as I.W.

### Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

### Background and Evidence

The Tenant testified that the tenancy began in the fall of 2013 and stated that initially the tenancy was for a fixed term after which it converted to a month to month tenancy.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 30, 2015 (the "Notice"). The Reasons cited on the Notice were that the Landlord, or the Landlord's spouse or a close family member intended to occupy the rental unit.

At the time the Tenant received the Notice he was paying rent in the amount of \$1,400.00 per month.

The Tenant moved out of the rental unit on August 31, 2015. The Tenant confirmed that the Landlord provided him with a free month's rent pursuant to the Notice.

Shortly after vacating the rental unit the Tenant discovered that the Landlord was attempting to rent the rental unit out. Introduced in evidence were copies of the ads posted by the Landlord, or her agents, dated September 20, 2015, October 14, 2015 and November 6, 2015. Initially, on September 20, 2015, the unit was advertised for a monthly rent of \$1,875.00, then \$1,800.00 and finally at \$1,700.00 on November 6, 2015.

The Tenant testified that on November 24, 2015 the rental unit was rented out. Introduced in evidence were copies of emails between the Tenant and the property manager confirming this.

The Tenant sought the sum of \$2,800.00 representing the two month's compensation provided for in section 51(2).

The Tenant testified that when he was asked to move he had a difficult time finding other accommodation and as such asked the property manager if he could stay longer and even offered to pay \$600.00 more per month. He stated that his request was denied and he was required to move to a temporary accommodation and then to another long term rental. Due to this he submitted he should be entitled to compensation for the cost to move twice, in addition to the move in and move out fees charged at both rentals.

In total the Tenant sought the sum of \$4,269.46 representing two month's rent and the moving expenses which he submits were unnecessary as the unit was subsequently rented to third parties.

The Landlord testified as follows. She confirmed that she was aware that she was to pay one month's compensation but she was opposed to paying two months' compensation.

The Landlord stated that she intended to occupy the rental unit and only decided to rent it after she was laid off from her work. She said that in August she was provided a verbal warning, after "something terrible happened", and then was laid off shortly thereafter. She claimed that when she was provided a verbal warning she was worried she would need to rent the rental unit and as such advertised it for rent. The Landlord also claimed that on September 26, 2015 she had a car accident which made residing in the rental unit not possible.

The Landlord confirmed that she rented out the rental unit for \$1,700.00 as of November 2015.

The Landlord stated that she was not able to communicate with the Tenant as he refused her attempts to do so and that he only communicated with her property manager.

In reply the Tenant stated that he offered to pay more in rent and that if the Landlord was afraid of losing her job it would have made sense for her to accept his offer of \$600.00 more per month to extend the tenancy.

### Analysis

The Tenant seeks monetary compensation pursuant to sections 67 and 51(2) of the *Residential Tenancy Act*. Section 51 applies when a Tenant receives a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 and reads as follows:

#### **Tenant's compensation: section 49 notice**

**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.

In this case, the Tenant received the Notice and vacated the rental unit as of August 31, 2015. Seventeen days later the rental unit was advertised for rent by the Landlord's property manager.

The Landlord claims that she was intending to reside in the rental unit as it was closer to her work, and was then forced to rent it out as she feared for her job security. She testified that as she feared she was later laid off. She also stated that shortly after advertising the rental unit, on September 26, she claims she was in a car accident.

Section 51(b) provides that if the rental unit is not used for the stated purpose, in this case, the Landlord residing in the rental unit, the Landlord *must* pay the Tenant double the monthly rent. This section is mandatory.

Even if the Landlord's personal circumstances deteriorated after she issued the Notice, there is no dispute that less than a month after the effective date of the Notice the rental unit was advertised for rent, and by November 2015 the rental unit was rented to a third party. The stated purpose was for the Landlord to reside in the rental unit and instead it was rented at a higher rate to a third party. Accordingly, and pursuant to section 51(b), I find the Tenant is entitled to the sum of \$2,800.00 representing double the monthly rent of \$1,400.00.

The Tenant also sought compensation for moving expenses. He stated that he was forced to move into a short term rental, before securing long term accommodation both of which attracted move in and move out fees. In total he sought the sum of \$1,469.46 for these moving expenses.

Section 51(1) provides the Tenant with compensation for moving expenses when a 2 Month Notice is issued. Section 51(2) provides further compensation when moving expenses were in fact unnecessary as the Landlord did not use the rental unit or the stated purpose.

Moving expenses are an inevitable cost of tenancy as tenants are not guaranteed perpetual occupation. While it is unfortunate the Tenant was not able to immediately secure long term accommodation, I find that this is not sufficiently connected to the issuance of the Notice to be compensable over and above the compensation provided for in section 51. Accordingly, I decline his request for further compensation relating to the expenses he incurred when moving from the rental unit to short term accommodation and then to a longer term rental.

The Tenant, having been substantially successful is entitled to recovery of the \$50.00 filing fee.

In total I award the Tenant the sum of **\$2,850.00** representing his two month's compensation pursuant to section 51(2) and recover of the filing fee.

The Tenant is granted a Monetary Order pursuant to section 67 for this amount and must serve the Order on the Landlord. (Notably, during the hearing the Landlord provided an updated address for service.) Should it be necessary, the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division) as an Order of that court.

## Conclusion

The Tenant is entitled to compensation pursuant to section 51(2) of the *Residential Tenancy Act* in the amount of \$2,800.00 in addition to recovery of the \$50.00 filing fee for a total award of **\$2,850.00.**

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: July 14, 2016

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Residential Tenancy Branch