



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act, return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The application included a monetary claim for loss. The tenants supplied a monetary worksheet that set out a claim for compensation under section 50 of the Act. The tenants were issued a two month Notice to end tenancy as the landlord planned on moving into the home. The landlord confirmed receipt of the initial application.

On March 14, 2016 the tenants submitted an amendment to the application. The tenants increased the claim by requesting compensation equivalent to two months' rent, pursuant to section 51 of the Act.

A monetary worksheet was included with evidence given with the original application setting out a request for two weeks compensation and "unproven damage", with no sum indicated. That was received at the start of the hearing and was assessed as a claim made by the tenants. As no sum was indicated I explained that portion of the claim could not proceed.

The landlord confirmed receipt of the application, the amended application and the evidence given with each application. Service occurred within the required time limit. The landlord did not make a written submission.

#### Issue(s) to be Decided

Are the tenants entitled to compensation pursuant to section 51 of the Act?

Are the tenants entitled to compensation pursuant to section 50 of the Act?

Are the tenants entitled to return of the security deposit?

#### Background and Evidence

The tenancy commenced on October 15, 2014, rent was \$3,000.00 due on the 15<sup>th</sup> day of each month. The tenants' paid a security deposit; the sum on the tenancy agreement supplied as evidence was not able to be viewed and not provided during the hearing.

On August 13, 2015 the landlord issued a letter to the tenants confirming the tenancy would convert from a fixed-term to month-to-month term. A copy of this letter was supplied as evidence. The tenancy agreement indicated the fixed-term concluded on October 15, 2015. There was no notation as to what would occur after the end of the fixed-term.

The landlord said that as they had been given post-dated cheques to February 2016, the tenants understood the tenancy should end at that time.

There was no dispute that the landlord issued a two month Notice to end tenancy for landlords' use of the property. The tenants initially received the Notice, sent via email on December 14, 2015. The Notice indicated that the landlord or a close family member would occupy the rental unit. The Notice had an effective date of February 15, 2016.

On January 14, 2016 the tenants' sent the landlord an email giving notice they would vacate the rental unit effective January 31, 2015. The tenants also served this notice to the landlord via registered mail sent on the same date. The landlord did not respond to the email. A Canada Post registered mail card was left for the landlord on January 18, 2016 but the mail was not retrieved by the landlord until January 27, 2016.

The landlord said he did not receive the email notice as he does sit by his computer all the time; they did not purposely ignore an email from the tenants. However, it was not until January 27, 2016 that the landlord received the notice issued by the tenants. The landlord said the tenants did not use the correct mailing address for service of documents, which caused the delay in receipt of the notice to pick up registered mail.

When asked which address was incorrect the landlord quoted the landlords' service address that had been given on the Notice ending tenancy issued to the tenants.

The tenants have claimed compensation in the sum of \$1,500.00 representing the two weeks rent that would be due to them. After receiving the Notice ending tenancy the tenants were entitled to compensation in the sum of \$3,000.00, equivalent to one months' rent. When the tenants gave notice to leave two weeks early they tenants said they should be provided with two weeks compensation, as they lived in the unit, rent-free for only two weeks. Thus the tenants were not provided with the equivalent of one months' rent.

The tenants vacated on January 31, 2016.

There was no dispute that within 21 days of the end of the tenancy the landlord listed the rental unit for sale. Within one month the rental unit sold. The landlord confirmed that their personal situation had changed and the property was listed for sale and sold. The sale was confirmed by a copy of the listing supplied by the tenants.

During the hearing the landlord said that he thought the compensation due tenants was unreasonable and unwarranted. I explained that it is important for both tenants and landlords' to be aware of their rights and obligations under the law.

### Analysis

I find that this was a fixed-term tenancy agreement that converted to a month-to-month term effective October 16, 2015. I have based this finding on the vague terms set out in the tenancy agreement which did not provide any clarification on what would occur at the end of the fixed-term. I also based this finding on the landlords' August 13, 2015 letter in which the landlord confirmed the term would convert to a monthly basis once the agreement had expired. The landlords' actions support this finding as the landlord went on to reply on a Notice ending tenancy.

Section 49 of the Act provides the landlord with the ability to issue a Notice ending tenancy if the landlord or a close family member plans to occupy the rental unit. This was the reason indicated on the Notice issued by the landlord.

Section 51(1) of the Act provides:

***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.***

(Emphasis added)

Therefore, if the tenants had remained in the rental unit until the February 15, 2016 effective date of the Notice they could do so without paying rent due between January

15 and February 14, 2016. The tenants did not pay rent that would have been due January 15, 2016. However the tenants then utilized section 50 of the Act, which provides:

***Tenant may end tenancy early following notice under certain sections***

**50** (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

*(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and*

*(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.*

*(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.*

*(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice]*

I find that the tenants attempted to serve the landlord in the same manner that the landlord had given the Notice ending tenancy. The landlord said they did not receive that email. The tenants also sent the landlord registered mail to the service address provided on the Notice ending tenancy issued by the landlord.

During the hearing the landlord explained that the mail was not retrieved in a timely fashion as it had gone to the wrong address. The landlord then confirmed that the address used by the tenants was in fact the service address provided by the landlord on the Notice to end tenancy. The tenants used the correct address.

Therefore, I have applied section 90 of the Act and deem receipt of the notice ending tenancy issued by the tenants to the landlord on January 19, 2016. I find that the delay in receipt of the mail was due to the fault of the landlord who was incorrect in stating the mail went to the wrong address and apparently not checking mail at the address given to the tenants for service of documents. The mail was ready to be retrieved on January 18, 2016 and I find that the responsibility for any delay in receipt falls to the landlord. Therefore, I find that the landlord was given notice pursuant to section 50(1) of the Act, within the required time limit, and that the tenancy ended effective January 31, 2016.

As the landlord is deemed to have received the tenants' notice at least 10 days prior to the end date of the tenancy I find, pursuant to section 50(3) of the Act that the tenants are entitled to compensation equivalent to two weeks rent in the sum of \$1,500.00. The tenants received the additional required two weeks of compensation as required by section 51 of the Act by remaining in the rental unit and not paying rent for that period of time.

I have then considered the fact that rental unit was sold and not used for the purpose set out in the Notice ending tenancy issued by the landlord. There is no dispute that the landlord sold the rental unit within a very short time of the tenants vacating. Section 51(2) of the Act provides:

*(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.*

Therefore, as the landlord did not use the rental unit for the stated purpose, by occupying the unit for at least six months I find pursuant to section 51(2)(b) of the Act that the tenants are entitled to compensation in the sum equivalent to double the monthly rent; \$6,000.00.

During the hearing the tenant did not raise any issues in relation to the security deposit. The application referenced the security deposit and deductions made from the deposit but the tenant did not make any submissions in relation to this matter during the hearing. I did explain that I would not hear a claim for the cost of repairs that may have been completed by the tenants, as details were not set out on the application. The monetary amounts set out on the application did not include a sum related to deposits. Therefore, the tenants have leave to reapply within the legislated time limit, should they have a claim for return of any portion of a deposit paid.

As the tenant's application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$7,600.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The tenants are entitled to compensation as claimed.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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: October 06, 2016

---

Residential Tenancy Branch

