



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNDC O OLC

### Introduction

This hearing dealt with an application by the tenant for a monetary order pursuant to Section 51(2) of the Act. The tenant also requested recovery of the filing fee from the landlord. Despite having been served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail on May 19, 2016, the landlord failed to attend the conference call hearing. The tenant provided a copy of the Canada Post receipt for the registered mail package.

### Issue(s) to be Decided

Is the tenant entitled to the requested order?

### Background and Evidence

This tenancy began on September 1, 2014. The rent was \$2400 per month. The rental unit was the front half of a front back duplex. On November 26, 2015 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The Notice indicated that the property was going to be occupied by the landlord or a close family member. The landlord also served the tenant with an accompanying Buyer's Notice to Seller for Vacant Possession of a Tenant Occupied Property. This Notice indicated that it was actually the purchaser, the landlord named herein, of the residential property who was going to be occupying the rental unit.

As a result of the Notice, the tenant vacated the rental unit in mid-December 2015.

Approximately 4 or 5 months later, the tenant discovered that the rental unit was still vacant and that no one had ever moved in. Then, in July 2016, the residential property was put up for sale with the front and back units being listed separately.

The tenant provided letters from three separate residents who live next door to the rental unit. These letters state that these residents had (a) not seen any indication that the rental unit had been occupied; or (b) any activity indicating the landlord's intent to occupy the rental unit since the tenant had vacated in December 2015.

The tenant also provided a copy of the listing advertisement for the rental unit from the website of the landlord's real estate agent which shows that the rental property was put up for sale in July 2016.

### Analysis

Section 51 of the Act says that if a landlord doesn't do what he said he was going to do in his 2 Month Notice to End Tenancy, there is a penalty. The reason for this is that the tenant has been evicted from the rental unit through no fault of his own – almost always at major inconvenience and life disruption. The amount of the penalty is the equivalent of two months' rent.

The actual provision of the Act is 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.

...

(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 the present case, the landlord clearly did not follow through with his stated intention to occupy the rental unit. As a result, the tenant is entitled to the compensation prescribed by Section 51(2) of the Act.

Because the upheaval in the life of this tenant was so great, I believe some words are warranted about the damage done by this landlord's actions.

The tenant in this case is a young family with two elementary school aged children. Prior to moving into this rental unit the tenant family had been living in the same neighbourhood (known as Cedar Cottage) in another rental accommodation for 6 years. A crucial aspect to this family's life was their childrens' attendance at a highly desirable school called Charles Dickens Elementary. This family had moved into the rental unit because they needed more room than the 600 square feet in which they had been previously living. They were very happy and excited to have found an affordable and beautiful place to live. The tenant was in this rental unit for just over a year when they received the landlords' Notice. I note that the Notice was received just before Christmas in the middle of the school year. This family obliged the landlord and moved but found that the only alternate living accommodations they could find put them 22 blocks away from Charles Dickens whereas they had been a just a few blocks away when in the rental unit. The strain of this distance became too difficult for this family to manage and they ended up having to completely uproot and move to Victoria. It was clear from the tenant's voice and explanation that this was a very difficult time for his family and that he felt they had been treated very badly in the sense that it looked to them that the landlord had never had any intention to move into the rental unit at all.

As stated above, the tenant is entitled to compensation.

### Conclusion

I hereby order that the landlord pay to the tenant the sum of \$4900.00 comprised of \$4800.00 in compensation owed under Section 51(2) of the Act and the \$100 filing fee that was paid by the tenant for this application. If the landlord does not pay this amount forthwith to the tenant, the tenant may file and enforce this order in the Small Claims Court Division of the Provincial Court of British Columbia.

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: November 14, 2016

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Residential Tenancy Branch