



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both the landlord and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began in June 2016 as a month to month tenancy with rent due on the 1<sup>st</sup> of each month. The landlord submitted that rent was \$650.00 and that the tenant paid a deposit of half that amount or \$325.00. The tenant submitted that rent was \$600.00 per month and the deposit was \$300.00.

The landlord confirmed that no written tenancy agreement was prepared. The tenant submitted that the landlord had completed a Shelter Information form for the Ministry of Social Development and Social Innovation that confirms these amounts and that she has a copy of the form. The tenant did not submit a copy of the form.

The landlord testified he served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 1, 2016 personally. The tenant submitted that she received the notice on September 8, 2016.

The landlord submitted a copy of the 2 Month Notice issued on September 1, 2016 with an effective vacancy date of October 31, 2016 citing the rental unit is to be occupied by the landlord or the landlord's close family member.

The landlord submits that the tenant has failed to pay rent for the months of October, November or December 2016. The landlord acknowledges that the tenant is entitled to compensation in the amount equivalent to 1 month's rent due to be issued the 2 Month Notice. The landlord seeks unpaid rent in the amount of \$1,300.00 for two months.

The tenant confirmed she has not paid the landlord rent for the months of October, November and December 2016. The tenant stated that she did not pay October 2016 rent because the landlord owed her compensation for the 2 Month Notice. She also stated that she attempted to pay the rent for November 2016 and the landlord refused to accept the payment and that she did not pay December 2016 rent because the landlord had told the Ministry that she had not paid rent and they would not issue her shelter funds.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(2) stipulates that the landlord may end the tenancy for such a purpose by giving a notice to end the tenancy effective on a date that must be (a) not earlier than 2 months after the date the tenant receives the notice; (b) the day before the day in the month, that rent is payable under the tenancy agreement; and (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I accept the testimony of both parties that the landlord issued the tenant a 2 Month Notice pursuant to Section 49. While the parties have provided different dates that the tenant received the Notice, I find that tenant received the Notice during the month of September.

In order for the Notice to comply with the requirements set out in Section 49(2), I find that earliest effective date for a Notice issued under Section 49 on any day during the month of September 2016 would have been November 30, 2016.

Section 53 of the *Act* allows that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section of the *Act*, the effective date is deemed to be the earliest date that complies with the relevant section.

As such, I order the effective date of the 2 Month Notice is amended to be November 30, 2016.

Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to

have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As there is no evidence before me that the tenant has filed an Application for Dispute Resolution seeking to cancel the 2 Month Notice, I find the tenant is conclusively presumed to have accepted the tenancy ends and she must vacate the rental unit.

Section 51 of the *Act* states that a tenant who receives a notice to end 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.

I accept the testimony of both parties that confirms that the tenant has failed to pay rent for the months of October, November and December. I also note that, pursuant to Section 51 of the *Act* the tenant is entitled to receive 1 months' rent as compensation. Therefore, I find the landlord is entitled to rent for 2 months only.

As the tenant is still in possession of the rental unit and December is the last month of the tenant's occupation of the rental unit I find that the compensation is for the month of December 2016. As such, I find the tenant is not required to vacate the property until December 31, 2016, pursuant to Section 68(2) of the *Act*.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent the burden of proving that amount of rent that was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such, as the landlord is making the claim for lost rent the burden rests with him to establish the amount of rent that was agreed upon.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy agreement or any other evidence to confirm the rent amount to be \$650.00. As such, I find the rent amount to be \$600.00 and that the security deposit is \$300.00 as stipulated by the tenant.

### Conclusion

I find the landlord is entitled to an order of possession effective **December 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,300.00** comprised of \$1,200.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,000.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: December 20, 2016

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Residential Tenancy Branch