



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF, O

### Introduction

This was a hearing with respect to the tenant's application for a monetary award for compensation pursuant to section 51 (2) of the *Residential Tenancy Act* based on the landlord's failure to use the rental unit for the purpose stated in a two month Notice to End Tenancy for landlord's use. The hearing was scheduled to be conducted as a conference call hearing. The tenant called in and participated in the hearing. The landlord did not call in and did not submit any evidence in response to the tenant's claim. The tenant served the landlord with the application and Notice of Hearing by registered mail sent on June 18, 2016. The registered mail was unclaimed by the landlord although according to Canada Post records, several attempts to deliver the registered mail were made and notice cards were left indicating where the registered mail could be picked up. Failure to pick up registered mail is not a legitimate excuse for failure to participate in a hearing or respond to an application for dispute resolution. Pursuant to section 90 of the *Residential Tenancy Act*, the respondent was deemed to have received the registered mail on the 5<sup>th</sup> day after it was mailed which was June 23, 2016.

### Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to two months rent pursuant to section 51(2) of the *Residential Tenancy Act*?

### Background and Evidence

The rental unit is one of two basement suites in the landlord's house in Surrey. The landlord lives in the upper portion of the house. The tenancy began in February 2014, initially for a fixed term and thereafter on a month to month basis. The monthly rent was \$700.00 and the tenant paid a \$350.00 security deposit at the start of the tenancy. The rental unit occupied by the tenant is a one bedroom unit. There is a second two bedroom rental unit in the basement of the rental property.

In February or March, 2016 the tenant told the landlord that her fiancée would be moving into the rental unit with her. She asked whether this would affect her rent. The landlord responded a few days later and said he would raise the rent by \$100.00 per month and would prepare a new tenancy agreement. The tenant sought advice and advised the landlord that she would not consent to the rent increase.

On March 20, 2016 the landlord personally served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice required the tenant to move out of the rental unit by May 31, 2016 and the stated reason for the Notice to End Tenancy was that the rental unit would be occupied by a close family member of the landlord. When the landlord gave the Notice to the tenant he told her that his daughter would be moving into the rental unit.

The tenant moved out of the rental unit on May 31, 2016 pursuant to the Notice to End Tenancy. She said that after she moved out she searched on the internet to see if the landlord had advertised the unit for rent. The tenant found an advertisement posted to Craigslist by the landlord on June 4, 2016 advertising his one bedroom suite for rent at a monthly rental of \$900.00 per month available right away. The tenant said that the advertisement was in the exact terms of the ad she responded to save for the rental amount; the ad gave the landlord's contact information and referred to the one bedroom basement suite, not the two bedroom also in the landlord's house.

### Analysis

Section 51(1) of the Act requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord did not use the rental property for the stated purpose, namely: for occupation by a family member. Instead he used it for an incompatible purpose by advertising it for rent to a new tenant at a higher rent within days of the end of tenancy.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation provided by section 51(2). The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. The tenant's evidence established that the landlord offer the unit for rent within days of the end of tenancy, a use wholly incompatible with the stated reason that it would be occupied by a close family member. I find that the landlord must pay to the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement, namely: the sum of 1,400.00. The tenant is entitled to recover the \$100.00 filing fee paid for her application for a total claim of \$1,500.00 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The tenant's application has been granted and a monetary award issued in the amount stated.

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 15, 2016

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Residential Tenancy Branch