



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, DRI, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a Two Month Notice to End Tenancy for landlords use of the property; to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the tenant withdrew her application to dispute the Two Month Notice to End Tenancy and to dispute the additional rent increase.

The tenant and an agent for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 Issues

The landlord's agent in attendance at the hearing confirmed that the landlord's agent named on the application has since retired and is no longer acting as an agent for the landlord. The landlord's name should be amended to reflect the landlord's name and this has been amended on the style of cause. The parties did not raise any objections to any Monetary Orders being in the landlord's name as amended and not that of his former agent.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2015 for a fixed term that ended on September 30, 2016 with the option of continuing on a month to month basis. Rent for this unit was \$1,300.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that she was served a Two Month Notice to End Tenancy on July 31, 2016 in person. The Notice provided the reason that the landlord wanted to end the tenancy as the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The landlord also informed the tenant in writing that his son would be occupying the rental unit.

The tenant testified that she found a new rental unit and vacated this rental unit on October 01, 2016. The tenant received the last month's rent for free and the security deposit was returned by the landlord. On November 20 the tenant received a voice message from the building manager asking the tenant for information from the owner about a duct above the washer/dryer. The tenant called the building manager back and informed them that she had moved out as far as she knows the landlord's son had moved in. The tenant found this conversation strange so investigated and found that the

unit was listed for rent on Craigslist. The photographs of the unit showed the unit as it was when the tenant lived there and it appeared as if no one had moved into the unit, the rent was \$450.00 higher than when the tenant lived there. The advert showed the unit was available for December 01, 2016.

The tenant testified that in the landlord's evidence package the utility bill provided also confirms that no one was living there as the bill was only for \$8.18 for the basic charges. The tenant testified that as the rental unit was not used for the intended purpose as set out on the Two Month Notice the tenant seeks compensation equal to two months' rent to an amount of \$2,600.00 and to recover her filing fee of \$100.00.

The landlord's agent testified that he is the son of the landlord; his work was moving downtown and he wanted a shorter commute so decided to move into the unit; however, in October after meeting his girlfriend's parents, his girlfriend invited him to live with her instead. The landlord's agent testified that the tenant took good care of the unit and that the landlord did not have any intention to mislead the tenant. The unit was standing empty so the landlord decided to sell the unit and the sale was completed on November 17, 2016. The landlord's agent testified that he was not aware that the new owners had listed the property for sale.

### Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows: The landlord did serve the tenant with a Two Month Notice to End Tenancy and provided one reason to end the tenancy that the landlord's son intended to occupy the rental unit. While the landlord's son may have later changed his mind about occupying the unit the tenant had still vacated the unit in accordance to the Notice.

I refer the parties to s.51 (1) and 51(2) of the *Act* which states, in part, that:

**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.*

Consequently, as the rental unit was not occupied by the landlord, the landlord's spouse or a close family member within a reasonable period or for at least six months and in fact the rental unit was later sold; I find the tenant has established a claim to recover the amount equivalent of double the monthly rent payable under the tenancy agreement of **\$2,600.00** and will receive a monetary award for this amount pursuant to s. 67 of the Act.

As the tenant's application has merit I find the tenant is also entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the Act.

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,700.00** pursuant to s. 67 and 72(1) of the Act. The Order must be served on the landlord. Should the landlord fail to comply

with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: January 09, 2017

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Residential Tenancy Branch