



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 12, 2016 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "Act"):

The Tenant attended the hearing on his own behalf, as did the Landlord. Both parties provided affirmed testimony.

The Tenant testified he served his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by regular mail on or about July 26, 2016. The Landlord confirmed receipt around that time.

The Landlord submitted documentary evidence, which was received at the Residential Tenancy Branch on January 25, 2017, two days before the hearing. The Landlord testified that these documents were served on the Tenant by posting copy to the Tenant's door on November 4, 2016. The Tenant denied receiving the Landlord's documentary evidence. However, the majority of the documents submitted by the Landlord were either duplicates of the Tenant's evidence or was provided orally by the parties. I find there is no prejudice to the Tenant in proceeding with the hearing.

Both parties attended the hearing and were prepared to proceed. No further issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Issue 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 each submitted a copy of the tenancy agreement between them. The agreement, signed and dated February 3, 2016, confirms the parties entered into a month-to-month tenancy. The Tenant was to move into the rental unit on March 1, 2016. Rent in the amount of \$800.00 per month was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00, which was returned to the Tenant at the end of the tenancy.

The Landlord testified that, between signing the tenancy agreement and March 1, 2016, he decided his daughter would live in the rental unit. Accordingly, he advised the Tenant of the change and issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 28, 2016 (the "2 Month Notice"). However, the Landlord permitted the Tenant to move into the rental unit as intended on March 1, 2016, with the understanding the tenancy would end on April 30, 2016, the effective date of the 2 Month Notice. The Landlord confirmed the Tenant paid rent for March 2016, but did not pay rent for April 2016.

The Tenant testified that, on receipt of the 2 Month Notice, he issued what he maintained was a ten day notice to end the tenancy early, as permitted under the *Act*. In support, he provided a copy of a text message, dated March 6, 2016, in which he advised the Landlord of his intention to move out of the rental unit early on March 12, 2016, which he did.

The Tenant seeks to recover compensation in the amount of one month's rent based on receipt of the 2 Month Notice, and to be reimbursed rent on a pro-rated basis for those days in March 2016 during which he did not reside in the rental unit.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 16 of the *Act* confirms that the rights and responsibilities of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, the tenancy agreement was entered on February 3, 2016. Although the tenancy agreement indicated the Tenant would move into the rental unit on March 1, 2016, I find the rights and responsibilities of the parties were in effect as of February 3, 2016.

The Tenant sought compensation pursuant to section 51 of the *Act*, which entitles a tenant who receives a notice to end tenancy for landlord's use of property to receive an amount equal to one month's rent payable under the tenancy agreement.

In this case, I find the Tenant was served with the 2 Month Notice on February 28, 2016. Although the Tenant paid rent for March 2016, he moved out of the rental unit on March 12, 2016. Accordingly, I find the Tenant is entitled to compensation equivalent to one month's rent, or \$800.00, pursuant to section 51 of the *Act*.

In addition, the Tenant sought to be reimbursed for rent paid for those days in March 2016 when he did not occupy the rental unit. The Tenant submitted he provided the Landlord with a 10 day notice to end the tenancy early, as permitted under section 50 of the *Act*, and that he is entitled to an amount on a pro-rated basis. However, section 52 of the *Act* stipulates that, to be effective, a tenant's notice must be in writing; be signed and dated; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy.

In this case, the tenant's notice was sent by text, was unsigned, did not provide the address of the rental unit, and did not provide an effective date that complied with the *Act*. Accordingly, I find the 10 day notice to end the tenancy early was ineffective and that the Tenant is not entitled to be reimbursed for those days in March 2016 when he did not occupy the rental unit. This aspect of the Tenant's claim is dismissed.

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$900.00, which consists of \$800.00 as compensation under section 51 of the *Act* and \$100.00 in recovery of the filing fee.

Conclusion

The Tenant is granted a monetary order in the amount of \$900.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 27, 2017

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Residential Tenancy Branch