



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL FF MNDC OLC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- a cancellation of the landlord's 2 Month Notice to End Tenancy (2 Month Notice) pursuant to section 49 of the *Act* ;
- a Monetary Order pursuant to section 67 for money owed or compensation for damage or loss under the *Act*;
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*; and
- an Order for the landlord to comply with the *Act* pursuant to section 62.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that he received the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package") along with evidentiary packages by way of Registered Mail on March 7, 2017. In accordance with sections 88, and 89 of the *Act*, I find that the landlord was deemed served with the tenant's application for dispute resolution and her evidentiary package.

At the outset of the hearing the tenant stated that she did not seek a cancellation of the landlord's 2 Month Notice as she had vacated the property on July 10, 2016. On this basis, the tenant's application to cancel the 2 Month Notice is withdrawn.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order?

Can the tenant recover the filing fee?

Should the landlord be ordered to comply with the *Act*?

## Background and Evidence

The tenant testified that this tenancy began in the early summer of 2014 and ended by way of Mutual Agreement to End Tenancy on July 10, 2016. Rent was \$1,332.50 per month.

The tenant stated that she was seeking a Monetary Order of \$902.66 for the period of July 11 to 31, 2016 to which she felt she was entitled. This amount represented the 20 days of value that she did not receive from the tenancy.

Both parties confirmed that the tenant did not pay any rent for the period of July 1 to 10, 2016 and that the parties entered into a Mutual Agreement to End Tenancy on July 10, 2016. The tenant explained that she left the unit earlier than the July 31, 2016 date because it “worked better for everyone.”

During the course of her testimony, the tenant explained that she was basing her argument on entitlement to compensation for the period of July 11 to 31, 2016 on the 2 Month Notice that was issued to her by the landlord. The tenant directed me to the section marked ‘Tenant Compensation For Landlord’s Use of Property’ where she noted that it says, *a tenant who receives this Notice can give 10 days’ written notice and move out early. The landlord must still pay the tenant one month’s rent as compensation.*

## Analysis – Monetary Order

The tenant’s argument concerning her entitlement to a Monetary Order is based on section 49 and 51 of the *Act*. Section 51(1) notes *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.*

Section 50(1) reads in part as follows:

*(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property],...the tenant may end the tenancy early by*

*(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice....*

This section continues by noting:

*(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].*

In this case, the effective date of the landlord's notice was July 31, 2016. When the tenant remained in the rental unit after July 1, 2017, the landlord's provision of accommodations for the last scheduled month of this tenancy at no cost was initiated. However, this did not prevent the tenant from exercising her right provided by section 50(1)(a) to end her tenancy early. To do so, she could only claim reimbursement pursuant to section 50(2) of the *Act* for that portion of July's rent after which time she could legally have ended her tenancy.

Under these circumstances, I find that the Mutual Agreement to End Tenancy signed on July 10, 2016 was effectively the tenant's 10 Day Notice to end her tenancy pursuant to section 50(1)(a) of the *Act*. The earliest date she could end her tenancy by providing a 10 Day Notice on that date would have been July 20.

The tenant is therefore entitled to compensation pursuant to section 51(1) of the *Act* for the eleven day period running from July 20 to 31, 2016 and she can recover a Monetary Order of \$472.82 ( $\$1332.50 \times 11/31 = \$472.82$ ). The remainder of the tenant's entitlement to compensation pursuant to section 51(1) was comprised of the landlord's omission to charge rent for the first ten days of July when she stayed in the rental unit, and her failure to provide the required ten days' notice to end her tenancy, which covered the period from July 10 until July 20, 2016.

As the tenant was successful in her application she may recover the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order pursuant to section 67 of the *Act* for \$472.82 in favour of the tenant. The tenant is provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The tenant's application to cancel the 2 Month Notice is withdrawn.

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: April 10, 2017

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Residential Tenancy Branch