



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MND, MNR, FF*

### **Introduction:**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, the cost of cleaning, painting, repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the monetary claim.

The tenant applied for a monetary order for compensation pursuant to s.51 of the *Residential Tenancy Act* and, for the return of the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The tenant stated that he received black and white photographs in the evidence package served on him by the landlord. The landlord replied that she mailed two sets of evidence packages to the tenant one of which contained coloured photos and the other had black and white photographs. I accept the landlord's testimony because the evidence on her physical file also contains two sets of photographs – one coloured and one black and white.

This matter which consists of applications by both parties was initially heard on February 10, 2017. The landlord did not attend that hearing and the landlord's application was dismissed without leave to reapply. The tenant attended the hearing and in a decision dated February 20, 2017, was awarded a monetary order.

The landlord applied for a review hearing and was successful. The decision dated February 20, 2017 was suspended pending the outcome of this hearing today – April 06, 2017.

Both parties provided extensive documentary and digital evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 85 minutes of hearing time, I have considered all the evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

It must be noted that the tenant made this application just three days shy of the limitation period of two years, as stated in Section 60(1) of the *Residential Tenancy Act*. The tenancy ended on December 03, 2014 and the tenant made this application on November 30, 2016. The landlord responded with an application of her own on January 23, 2017 which is beyond the limitation period of two years from the end of tenancy.

Section 60(3) of the *Residential Tenancy Act* states that if an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this *Act*, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The landlord made her application on January 23, 2017, after the applicable limitation period had ended on December 03, 2016. However her application was made prior to the dispute resolution hearing of the tenant's application which took place on February 10, 2017. Therefore pursuant to section 60(3), the landlord had the ability to make her application after the limitation period of two years from the end of tenancy.

The tenant referred to a decision dated January 18, 2017 regarding a complaint by the tenant before the BC Human Rights Tribunal and filed a copy of the decision. The decision is 61 pages long but the tenant filed pages 1, 2 and 57-61.

Since the tenant's complaint to the tribunal was regarding harassment and threats made by the landlord, I find that the decision has little to no bearing on today's hearing which deals with the monetary claims of both parties. In addition, I am not bound by that decision and since the tenant did not file the entire decision of the Human Rights Tribunal into evidence, it was not used in the making of this decision.

### **Issues to be decided**

Did the tenancy end pursuant to a one month notice to end tenancy or pursuant to a ten day notice to end tenancy? Is the landlord entitled to a monetary order for unpaid rent, the cost of cleaning, painting, repairs and the filing fee? Is the tenant entitled to compensation pursuant to s.51 of the *Residential Tenancy Act* and to the return of the security deposit?

## **Background and Evidence**

Both parties agreed to the following:

- The tenancy started in December 2010 for a monthly rent of \$800.00.
- Prior to moving in the tenant paid a security deposit of \$400.00
- On August 31, 2014, the landlord served the tenant with a notice to end tenancy for landlord's use of property with an effective date of October 31, 2014.
- The tenant disputed the notice.
- The dispute was heard on November 04, 2014 and adjourned to a later date to allow the tenant time to find new accommodation.
- The reconvened hearing took place on December 11, 2014. The tenant had already moved out on December 03, 2014 and therefore the tenant's application to dispute the notice was not dealt with. However the Arbitrator determined that the notice to end tenancy was served on the tenant on September 01, 2014 and accordingly amended the effective date of the notice to end tenancy to November 30, 2014.
- The tenant lived rent free for the month of October 2014 pursuant to the notice to end tenancy for landlord's use of property
- The tenant failed to pay rent for the month of November 2014
- On November 05, 2014, the landlord served the tenant with a ten day notice to end tenancy for non-payment of rent
- The tenant did not pay rent or dispute the notice within five days of receipt of the notice
- The tenant agreed that he did not pay rent for October and November and moved out on December 03, 2014
- The tenant agreed that he owed prorated rent for December 2014

During the hearing, the tenant stated multiple times that the landlord harassed and threatened him and therefore he was forced to move out. The landlord denied the allegations of having harassed or threatened the tenant.

The landlord stated that the tenant left the unit in a condition that was dirty and in disrepair. The landlord filed photographs of the unit taken on December 04, 2014, the day after the tenant moved out. The photos show that the unit was left in an unclean condition. I viewed all the photographs and it is apparent from both sets - the black and white set and the coloured set that the rental unit required cleaning.

The tenant testified that he had hired two women to clean the rental unit prior to moving out. In his written submission, the tenant states “*there may have been some cleaning left over after I had the apartment cleaned*”

The landlord has also made a claim for the cost of paint supplies and labour. The landlord stated that the tenant left some damage and is claiming for the cost of repairs to the drywall. One photograph shows a hole in the wall. The tenant denied having damaged the wall.

The landlord is claiming the following:

1.	Unpaid rent for October	\$800.00
2.	Unpaid rent for November	\$800.00
3.	Unpaid rent for December	\$800.00
4.	Cleaning 18 hours @ \$22	\$396.00
5.	Paint – supplies and labour	\$360.00
6.	Repairs to baseboards and drywall	\$320.00
7.	Filing fee	\$100.00
	<b>Total</b>	<b>\$3,576.00</b>

The tenant testified that the landlord or a close family member did not move into the rental unit after he moved out. The landlord denied the allegation and stated that grandchildren of the landlord moved into the rental unit and lived there for two and a half months. Both parties agreed that the rental unit is located in the basement of the home and the landlord lives upstairs.

The tenant is claiming compensation in the amount of two months’ rent pursuant to Section 51 of the *Residential Tenancy Act*.

The tenant stated that the landlord did not conduct move in or move out inspections and therefore her right to retain the security deposit was extinguished. The landlord agreed that no inspections were carried out. The tenant has applied for the return of his security deposit of \$400.00.

During the hearing the parties disagreed on the provision of the forwarding address of the tenant to the landlord. The landlord stated she did not receive a forwarding address from the tenant until she received this notice of dispute resolution for an application made by the tenant on November 30, 2016. The tenant testified that in February 2015, he had served the landlord with a copy of his application to the Human Rights Tribunal and his address was recorded in those documents

The tenant is claiming the following:

1.	Compensation of 2 months' rent	\$1,600.00
2.	Return of the security deposit	\$400.00
	<b>Total</b>	<b>\$2,000.00</b>

The tenant agreed that he did not pay rent for November 2014 and overstayed for three days in December 2014. The tenant has agreed to a deduction of a total of \$877.42 as unpaid rent for this period of time.

During the hearing the tenant repeatedly referred to the Human Rights Tribunal decision dated January 18, 2017 and to a prior Residential Tenancy Branch decision dated December 12, 2014. The tenant wanted to testify in detail about those proceedings.

The tenant provided me with the file numbers for the Residential Tenancy Branch hearings on November 11 and December 04, 2014. This hearing dealt with applications by both parties. The landlord had applied for a monetary order for unpaid rent and the tenant had applied to dispute the notice to end tenancy

In the first hearing on November 11, 2014, the matter was adjourned to December 04, 2014. By the time the second hearing took place the tenant had already moved out and the Arbitrator did not address the tenant's application to dispute the notice other than to amend the effective date of the notice. The landlord's application for a monetary order was dismissed with leave to reapply

### **Analysis**

Based on the monetary claims of both parties, it is important that I must first determine whether the tenancy ended pursuant to the two month notice to end tenancy for landlord's use of property or pursuant to the ten day notice to end tenancy for non-payment of rent.

The two month notice dated August 31, 2014 had an effective date of October 31, 2014. During the hearing on December 11, 2014, the Arbitrator determined that the notice was served on September 01, 2014 and accordingly corrected the effective date of the notice to November 30, 2014.

Pursuant to the notice to end tenancy for landlord's use of property, the tenant was entitled to the last month of rent free stay. The tenant availed himself of compensation in the amount of one month's rent by not paying rent for October 2014.

However since the tenancy would end on November 30, 2014 and the tenant had already availed himself of the one month of free stay pursuant to a section 49 notice, the tenant was required to pay rent that was due on November 01, 2014. The tenant failed to do so and continued to occupy the rental unit until he moved out on December 03, 2014. In addition the tenant did not pay rent that was due on December 01, 2014.

On November 05, 2014, the landlord served the tenant in person, with a ten day notice to end tenancy for non-payment of rent, with an effective date of November 15, 2014. This notice complied with section 52 of the *Act*. The tenant did not dispute the notice and did not pay rent within five days of receiving the notice to end tenancy for non-payment of rent. During the hearing the tenant agreed that he had not paid rent for November 2014 but stated that due to the harassment and threats of the landlord, he was forced to move out and at short notice was only able to find a place that required him to pay three months' rent in advance. The tenant stated that this left him with insufficient funds to pay rent for November.

Section 46(3) states that a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the *Act* to deduct from rent. Based on the testimony of the tenant I find that despite his claims of harassment and threats from the landlord he was not permitted under the *Act* to withhold rent and was obligated to pay full rent on November 01, 2014.

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on November 05, 2014 and did not full pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so had expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice which was November 15, 2014. Therefore I find that the tenancy ended on November 15, 2014, pursuant to the notice to end tenancy for non-payment of rent. Accordingly I find that the tenancy did not end pursuant to the notice to end tenancy for landlord's use of property and therefore, I find that the tenant is not entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*.

What is not clear is that if the tenant was harassed and threatened by the landlord as testified by him during the hearing, he would have made efforts to move out as soon as he could but instead chose to continue to reside at the rental unit, beyond the effective dates of both the ten day notice and the two month notice.

In addition if the tenant was required to pay three months' rent at the new place which he testified caused him to miss paying rent on November 01, 2014, then the tenant was entitled to move into this new place that he had paid rent for. Based on the tenant's testimony and written submissions, I find that the tenant is knowledgeable about the *Residential Tenancy Act*, and is not likely to have agreed to pay three months' advance rent to the landlord of the rental unit that he intended to move to.

Based on the above, I find that the tenancy ended pursuant to the ten day notice to end tenancy. The tenant agreed that as of the date of this hearing more than two years later that he still owed rent for the period of November 01 to December 03, 2014.

Landlord's application:

1. Unpaid rent for October - \$800.00
2. Unpaid rent for November - \$800.00

I have determined that the tenancy ended pursuant to the 10 day notice to end tenancy and therefore I find that the tenant is not entitled to compensation pursuant to a section. 49 notice to end tenancy for landlord's use of property. Accordingly the tenant was not entitled to live rent free for the month of October 2014. The tenant agreed that he owed rent for November 2014. Therefore I find that the landlord is entitled to her claim of \$1,600.00 for unpaid rent for the months of October and November 2014.

3. Unpaid rent for December - \$800.00

The landlord stated that the unit was not available for rent for the month of December 2014, as relatives were occupying the unit. Therefore the landlord is not entitled to her claim for loss of income for December 2014. The tenant agreed that he overstayed for three days in December and agreed to pay prorated rent in the amount of \$77.42.

4. Cleaning 18 hours @ \$22 - \$396.00

Based on the photographs filed into evidence by the landlord and the tenant's written submission about the cleaning of the rental unit at the end of tenancy, I find that the landlord is entitled to her claim of \$396.00

5. Paint – supplies and labour \$ 360.00

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting.

As per this policy, the useful life of interior painting is four years. The landlord last painted the unit in November 2010 and therefore by the end of the tenancy, the painting had outlived its useful life and the landlord would have to paint the unit at her own cost. Accordingly, the landlord's claim for \$360.00 for painting is dismissed.

6. Repairs to baseboards and drywall - \$320.00

The tenant denied having caused damage to the rental unit. The photographs show one square hole in one wall. I find that the landlord is entitled to the cost of repairs to the drywall. Based on the photographs, I find it appropriate to award the landlord \$30.00 towards the cost of repairing the hole in the wall.

The landlord has not proven the balance of her claim for repairs and therefore her application for the remainder of the cost of repairs is dismissed.

7. Filing fee - \$100.00

The landlord has proven most of her claim and therefore is entitled to the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Unpaid rent for October	\$800.00
2.	Unpaid rent for November	\$800.00
3.	Unpaid rent for December	\$77.42
4.	Cleaning 18 hours @ \$22	\$396.00
5.	Paint – supplies and labour	\$0.00
6.	Repairs to baseboards and drywall	\$30.00
7.	Filing fee	\$100.00
	<b>Total</b>	<b>\$2,203.42</b>

Tenant's Application

1. Compensation of 2 months' rent \$1,600.00

I have determined that the tenancy ended pursuant to a ten day notice to end tenancy for non-payment of rent. Therefore the tenant is not entitled to compensation pursuant to section 51 which is triggered by a section 49 notice to end tenancy for landlord's use of property.



2. Return of the security deposit - \$400.00

Even though the tenant has applied for the return of the base amount of the security deposit, I have considered the tenant's entitlement to the return of double the security deposit.

I now have to determine whether the landlord received the tenant's forwarding address in writing, prior to receiving the notice of hearing package.

The tenant testified that the landlord received his forwarding address when he served her the notice of his application to the Human Rights Tribunal in February 2015. The landlord stated that she did not receive a written request from the tenant regarding the return of the security deposit and also did not receive a forwarding address in writing.

A forwarding address only provided by the tenant on an application for dispute resolution form or any other application forms does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.

Based on the above, I find that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of application to the Human Rights Tribunal and serving the landlord with a notice of this dispute.

Accordingly, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. Therefore the tenant is not entitled to the return of double the deposit.

Pursuant to Section 24(2)(c) of the *Residential Tenancy Act* the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete a condition inspection report. In this case the landlord agreed that she had not completed condition inspection reports and therefore her right to the return of the deposit is extinguished. The tenant is entitled to the return of the base amount of the security deposit.

The tenant has established a claim as follows:

1.	Compensation of 2 months' rent	\$0.00
2.	Return of the security deposit	\$400.00
	Total	<b>\$400.00</b>

The landlord has established a claim of \$2,203.42 and the tenant has established a claim of \$400.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$1,803.42 which consists of the difference in the established claims of the two parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$1,803.42**.

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 13, 2017

---

Residential Tenancy Branch