



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

**Dispute Codes**      MNDC   FF

### **Introduction**

This Review Hearing was convened in response to a successful application by the tenant for Review of a Decision dated June 06, 2017. At the original hearing solely the respondent landlord attended the proceeding and the tenant's matter was dismissed. Both parties attended the reconvened hearing on this date.

The tenant seeks a Monetary Order pursuant to the *Residential Tenancy Act* (the Act) and to recover the filing fee. The parties provided testimony and were provided the opportunity to make relevant submissions. The parties were also provided opportunities to mutually resolve their dispute to no avail.

The landlord acknowledged they ultimately received the tenant's original application package having been filed December 08, 2016, and the tenant acknowledged they subsequently did not submit additional evidence. The landlord testified they sent 2 packages of evidence in March and May 2017 by registered mail to the tenant to the address provided in their original December 2016 application (E. 41<sup>st</sup> Ave). However, the tracking information provided for both packages indicates the intended mail delivery as inconclusive or undeliverable. The tenant testified that before March 2017 they had moved to a residence out of country and had not provided a forwarding address to the landlord. The landlord testified they sent the mail as was instructed and legally required and did not employ other methods of service.

Respecting the above, I am satisfied by the parties' respective testimony in the hearing that the intended exchange of evidence consisted primarily of their version of events: all of which was given in testimony by the parties during the hearing. The hearing advanced on the merits of the tenant's application and the relevant testimony of the parties. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant evidence in this matter is as follows. The tenancy began in April 2004 and ended June 30, 2016 when the tenant vacated the rental unit. The rent payable under the fixed term tenancy agreement was \$2029.50 per month. The fixed length of time of the agreement did not indicate what was to occur at the end of the fixed term date of April 30, 2016.

The undisputed testimony is that the landlord personally informed the tenant in January 2016 requesting they vacate at the end of the fixed term as they would not be entering into a new tenancy agreement after the fixed length of time because they required the rental unit for their own use as their daughter would be occupying the entire residential property. The landlord subsequently followed the informal exchange in writing.

The tenant testified that in good faith they accepted the landlord's reasons and request for ending their tenancy for the family's use; and, they accepted the tenancy was coming to an end April 30, 2016. The parties confirmed they ultimately agreed the tenancy would end on June 30, 2016. It must be noted the parties' agreement was not established in writing but each acknowledged and advanced to the agreed end date. The tenant's plea to further delay the tenancy's end to August did not advance to subsequent agreement and the tenant vacated June 30, 2017. The tenant testified they did not dispute the landlord's intentions or request to vacate by filing for dispute resolution, nor requested the landlord serve them Notice to End pursuant to the Act, however they later came to know it was available to them to do either or both before choosing to vacate. The landlord testified they assumed they were following an appropriate course by simply not entering into a new fixed term agreement as was their annual practice.

The tenant testified they ultimately came to learn from a neighbour that the landlord's daughter did not occupy the rental unit as they understood would occur. The unit was re-rented to new tenants. The tenant testified they had accepted the landlord's request to vacate so their daughter could occupy the unit and feel they were unfairly ousted from their home as a result. The landlord testified that after the tenant vacated they discovered it was too costly to renovate and accommodate their daughter into the rental unit and therefore abandoned this course.

During the hearing the parties were informed in respect to the ways the Act defines how a tenancy ends and the parties confirmed that the tenancy ended by the tenant vacating as discussed and agreed by the parties.

The tenant seeks compensation for moving costs and 2 month's rent pursuant to the operation of **Section 51(2)** of the Act as the landlord did not accomplish their stated purpose to accommodate their daughter in the rental unit. The tenant argued the landlord acted without regard for the tenant in seeking to end the tenancy before assessing the feasibility of accommodating their daughter. The landlord's response was that the tenant benefitted from lower than market rent in recent years and that they may have ended the tenancy prematurely.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

In this matter it must be noted, as discussed in the hearing, that the tenancy automatically reverted to a month to month periodic tenancy after the fixed length of time to April 30, 2016. **Section 44(3)** of the Act states it as follows,

#### **How a tenancy ends**

**44(3)** If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As a result, at the end of the fixed term it was available for the landlord to give the tenant a **Section 49** Landlord's Notice: *2 Month Notice to End tenancy for landlord's use* in the approved form so as to accommodate a child, however, this did not occur. A Section 49 Notice carries with it a mandatory compensation provision to the tenant equivalent to the payable monthly rent as offset of the last month's rent, or as an even payment at the end of the tenancy. Instead, the tenant and landlord accepted their January 2016 arrangement with the tenant providing the landlord the rent for their last 2 months and the tenant vacating as agreed.

**Section 44** of the Act further prescribes how a tenancy *legally* ends. I find the evidence in this matter is that this tenancy ended pursuant to Section 44(1)(d). It states,

#### **How a tenancy ends**

**44(1)(d)** the tenant vacates or abandons the rental unit;

In respect to the tenant's monetary claims, I find that **Section 51(1)** of the Act states that any compensation due pursuant to this Section is predicated on the tenant

receiving an approved 2 Month Notice to End tenancy for Landlord's Use pursuant to Section 49. That is, the operation of Section 51 is that the prescribed compensations are not triggered in the absence of such a Notice to End. In this matter I find that the parties simply agreed between them to end the tenancy and that a Section 49 Notice to End was not received by the tenant. As a result, I find that the Section 51 compensation provisions were not triggered therefore the tenant is not entitled to compensation as afforded by this section. While I may accept the tenant's argument that the landlord obtained an end to their tenancy without due diligence, I find that I am not authorized to grant compensation to penalize the landlord for their conduct or to grant compensation because of the parties' choices or inactions in this matter.

As a result of all the above, I must **dismiss** the tenant's application in its entirety.

### **Conclusion**

The tenant's application is dismissed.

It must be noted that **Section 79 (7)** of the Act states as follows,

#### **Application for review of Director's Decision or Order**

**79 (7)** A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

#### **This Decision is final and binding.**

*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: September 15, 2017

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Residential Tenancy Branch