



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes: CNL, FF

## Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated September 4, 2017
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the two month Notice to End Tenancy was personally served on the Tenant on September 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 9, 2017. With respect to each of the applicant's claims I find as follows:

## Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated September 4, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

## Background and Evidence:

The tenancy began on November 1, 2014. The rent is \$380 per month including utilities payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$190 at the start of the tenancy.

## Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

## Settlement:

At the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on March 1, 2018.

- b. The parties request that the arbitrator issue an Order of Possession for March 1, 2018.
- c. The parties acknowledge the tenant is entitled to the equivalent of one month rent free as the landlord served a 2 month Notice to End Tenancy on the Tenant and the tenant has taken advantage of this right by receiving the one month rent free for November 2017.
- d. The parties acknowledged the Tenant retains the right to end the tenancy earlier than March 1, 2017 by giving 10 days notice under section 50 of the Act which is included below.
- e. The landlord shall reimburse the tenant the sum of \$50 which is half of the cost of the filing fee such sum may be deducted from future rent.

Order for Possession:

As a result of the settlement I granted an Order of Possession effective March 1, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Section 50 and 51 of the Residential Tenancy Act provides as follows:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], 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, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

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

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

**This decision is final and binding on the parties.**

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: November 29, 2017

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Residential Tenancy Branch