



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MNDC, OLC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for the Landlord to comply with the Act, regulations and the tenancy agreement, for compensations under the Act, regulations or tenancy agreement and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 25, 2017. Based on the evidence of the Tenant including Canada post tracking information and a copy of a paid receipt, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

At the start of the conference call the Tenant said she moved out of the rental unit on January 31, 2017 so she is withdrawing the claim to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

### Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for that loss or damage and if so how much?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?
4. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

This tenancy started in March, 2014 as a month to month tenancy. Rent was \$900.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy and the Tenant said the security deposit was returned at the end of the tenancy. The tenancy ended on January 31, 2017.

The Tenant said the rental unit was sold to the Landlord on November 1, 2016 at which time the new owner requested a new tenancy agreement with an increased rent of \$100.00. The Tenant contacted the Residential Tenancy Branch as she did not agree with the rent increase. The



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Tenant also said there was some discussions with the new Landlord about the Tenant getting a dog but this did not happen. The Tenant continued to say the relationship with the new Landlord declined and the new Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated November 15, 2016. The Tenant said the reason on the Notice to End Tenancy was the Landlord or close family member was moving into the rental unit. The Effective vacancy date on the Notice to End Tenancy was January 31, 2017. The Tenant said she moved out on January 31, 2017.

The Tenant continued to say that she moved into a rental unit next door to the Landlord's rental units. The Tenant said she saw an advertisement to rent her previous unit and the advertisement was dated for a move in on March 1, 2017. The Tenant said the people who moved in March 1, 2017 and they were not close family members of the Landlord or the Landlord. The Tenant submitted a copy of the advertisement for the basement unit in support of her application.

The Tenant continued to say she has made her application under section 51 of the Act which says if a landlord does not complete the reasons on a 2 Month Notice to End Tenancy for Landlord's Use of the Property as indicated on the Notice then a tenant is entitled to compensation of the equivalent of 2 months rent. The Tenant said the rent was \$900.00 per month so she is requesting \$1,800.00 as compensation.

Further the Tenant requested to recover the filing fee of \$100.00 for this application.

The Landlord did not attend the hearing and did not provide any written evidence in his defence.

### Analysis

Section 51 of the Act says:

(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,**



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**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.**

I accept the Tenant's testimony and evidence that the Landlord or a close family member did not move into the rental unit as indicated in the reasons for issuing the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated November 15, 2016. Consequently pursuant to section 51 of the Act I award the Tenant \$1,800.00 in compensation.

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord.

I have issued a monetary order to the Tenant in the amount of \$1,900.00 representing the compensation under section 51 of the Act and for the recover of the filing fee for this application.

### Conclusion

A Monetary Order in the amount of \$1,900.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 14, 2017

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Residential Tenancy Branch