



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL, MT, MNDC, FF

### Introduction

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

- a. An application to cancel a two month Notice to End Tenancy that was served on the Tenant on April 26, 2017.
- b. An application for an order granting more time to make this application
- c. A monetary order in the sum of \$3000
- d. 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.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Tenant was sufficiently served with the 2 month Notice to End Tenancy on April 26, 2017. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business in September 2017. With respect to each of the applicant's claims I find as follows:

### Preliminary Matter:

The tenant stated he was no longer interested in an order cancelling the 2 month Notice to End Tenancy as he has found alternative accommodation. As a result I ordered that the application of the Tenant for more time to make this application and for an order cancelling the 2 month Notice to End Tenancy be dismissed.

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

The tenancy began in December 2014. The rent was \$1500 per month payable in advance on the first day of the month. The tenant did not pay a security deposit.

The tenant claims the equivalent of 2 months rent under section 51(2) of the Act based on the following evidence:

- In May of 2014 the tenant was hired as a sub-contractor through TOD (hired by the strata corporation) to provide on-site administrative services, including working in the on-site office and responding to resident issues, coordinating with trades and corresponding with the strata agent an on-site caretaker.
- On April 26 2017 the Tenant was served with a 2 month Notice to End Tenancy under section 49 of the Act. The grounds in the Notice provided as follows;

“The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property”

- Prior to that date he learned that the Strata Council intended to terminate the contract with TOD.
- His tenancy with the landlord was never subsidized. He paid the full rent on a monthly basis.
- The Tenant did not dispute the Notice to End Tenancy. He vacated the rental unit on May 31, 2017. The tenant has received the benefit of one months rent free as he is entitled to do under section 51(1) of the Act.
- In September the tenant testified he learned that the Strata Council has rented the rental unit to someone who is not the on-site manager. The person who was hired to act as the on-site manager is an owner in the strata was and continues to be currently living in another rental unit.

The landlord referred to a summary or evidence that is set out in a counterclaim the landlord is bringing against the tenant in another file that is set for June 2017. The landlord gave the following evidence:

- At the time the landlord made the decision to terminate the contract with TOD they intended in good faith to rent use the tenant's rental unit as the rental unit for a newly hired site manager.
- On or about May 1, 2017 the landlord became aware of a resident in the strata complex that was incorporating a building management company and wished to be considered for the role of building manager. Subsequently the owner's company was retained to provide the building manager services. As the resident already owned a unit in the complex there was no need to rent the unit to him.
- The tenant was fully aware of this new arrangement prior to vacating at the end of May. The tenant surrendered his keys/fobs to the new building manager.

- The tenant did not seek to rescind the two month notice at the time the new manager was hired, or ever during the 2 month notice period.
- The tenant did not act in good faith.
- The tenant has been late paying the rent on many occasions. The landlord could have terminated the tenancy for cause but served the 2 month Notice instead to help the tenant out.

SECTION 51 OF THE RESIDENTIAL TENANCY ACT:

Section 51(2) of the Residential Tenancy Act provides as follows:

- 51 ((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.

After carefully considering all of the evidence I determined the Tenant is entitled to the amount claimed the following reasons:

- The tenant was served with a 2 month Notice to End Tenancy under section 49 of the Act on April 26, 2017 that provided that the “The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property”
- The landlord never took steps to accomplish the stated purpose within a reasonable period of time after the effective date of the notice. The rental unit was not used for that stated purpose prior for at least 6 months beginning with a reasonable period after the effective date of the notice.
- Policy Guideline 11 includes the following:

“A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.”

- I do not accept the submission of the solicitor for the tenant that the tenant is precluded from making a claim under section 51(2) because he did not take steps to have the Notice rescinded.

- I do not accept the submission of the solicitor the landlord that the tenant was not acting in good faith. The obligation to make the payments under section 51 is triggered by the serving of the 2 month Notice to End Tenancy. That decision is entirely within the discretion of the landlord. The Act does not impose an obligation on the tenant to Act seek to have the landlord rescind the Notice in a situation such as this. The failure of the tenant to do so does not amount to a failure to act in good faith.
- I do not accept the submission of the landlord that I have equitable jurisdiction and that I should deny the tenant's claim because he does not have clean hands.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3000 plus the sum of \$100 in respect of the filing fee paid for a total of \$3100.

It is further Ordered that this sum be paid forthwith.

The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The landlord retains the right to bring their claim which is set for hearing in June 2018.

**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: December 13, 2017

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Residential Tenancy Branch