



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, FF

### **Introduction**

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

- a. A monetary order in the sum of \$8400
- b. An order to recover the cost of the filing fee.

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

- a. A monetary order in the sum of \$4750
- 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.

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 Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 3, 2017. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Landlord was sufficiently served on the Tenant by mailing, by registered mail on November 19, 2017.

### **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?
- c. Whether the landlords are entitled to a monetary order and if so how much?
- d. Whether the landlord(s) are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on November 1, 2014 when the parties entered into a one year fixed term written tenancy agreement that became month to month after the expiry of the fixed term. The tenancy agreement provided that the rent was \$3300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1650. The previous arbitration records that additional benefits were provided to the tenant and the rent was increased to \$3650. The tenancy ended on June 12, 2017 when the tenant vacated the rental unit. The security deposit has been dealt with in a previous arbitration.

On February 27, 2018 the landlord served a 2 month Notice to End Tenancy on the Tenant by posting that set the end of tenancy for April 30, 2018. The ground set out in the Notice was for landlord use. The tenant applied her right to the equivalent of one month rent free to the rent for April. She advised the landlord that as he had served by posting (which is not deemed received under the Act until 3 days after posted) he had failed to give her the required 2 clear months notice for an effective end of tenancy date of April 30, 2017. She advised that she was staying until the end of May 2017.

The tenant failed to pay the rent for May 2017. The landlord served a 10 day Notice to End Tenancy dated May 19, 2017 on the Tenant for non payment of the rent for May. The tenant filed an Application for Dispute Resolution to dispute the Notice to End Tenancy on May 27, 2017 along with other claims. This issue was not dealt with by the previous arbitrator as the tenant had vacated the rental unit by the time the hearing was held.

The tenancy ended on June 12, 2017 when the Tenant vacated. The landlord's agent agreed with the Tenant that the landlord would not charge the Tenant for the 12 days of over-holding in June.

The Tenant testified the landlord failed to move into the rental unit as stated in the 2 month Notice to End Tenancy. She provided evidence that on September 1, 2017 she visited the rental unit and that a new Tenant was moving in. The rent for the new Tenant was \$5000 per month.

The landlord testified that when he served the 2 month Notice to End Tenancy he intended to move into the rental unit as he had been given a job opportunity in the area. However, his mother who had dementia and lives in England had a serious fall and he

had to spend significant period of time in England tending to her health situation. He will be returning to England shortly to follow up on the treatment of his mother.

The landlord further submits that the tenant is not entitled to this claim as the 10 day Notice to End Tenancy for non-payment of rent supersedes the 2 month Notice. The corrected date for the end of tenancy on the 2 month Notice was May 31, 2017. The end of tenancy date for the 10 day Notice was May 29, 2017. Thus the tenancy came to an end on May 29, 2017 because of the 10 day Notice and this supersedes the 2 month Notice to End Tenancy.

The rental remained vacant until September 1, 2018. At that time new tenants moved into the rental unit. The landlord testified the tenant harassed the new tenants when she came to visit on September 1, 2018 and he ended up settling with them by paying them \$850.

#### Tenant's Claim:

The tenant claims the equivalent of 2 months rent under section 51(2) of the Act in the sum of \$7300. Section 51 of the Residential Tenancy Act provides as follows:

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.

...

(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.

- (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.

I determined the Tenant has established a claim against the Landlord(s) in the sum of \$7300 for the following reasons:

- Section 51(2) requires that steps be taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. It also requires that the rental unit be used for the stated purpose for at least 6 months beginning with a reasonable period after the effective date of the Notice. The stated purpose set out in the Notice was for landlord use. The landlord failed to move in. The rental unit was vacant for 2 ½ months. The landlord subsequently rented it for the increased rent of \$5000 per month. It has not been used for the stated purpose.
- The Act does not give an arbitrator the discretion to relieve a landlord from these obligations if there has been a change in circumstances.
- I do not accept the submission of the landlord that the tenant is not entitled to make this claim because the 10 day Notice to End Tenancy supersedes the 2 month Notice to End Tenancy. The Act provides that the obligation to pay these sums is triggered by the service of the 2 month Notice to End Tenancy under section 49. It is not triggered by which Notice ended the tenancy.
- The landlord has been compensated for the tenant's failure to pay the rent for May in a previous arbitration.

I dismissed the Tenant's claim of \$1000 for harassment, pain and suffering. The Tenant failed to present sufficient evidence to establish this claim.

In summary I determined the tenant has established a monetary claim against the landlord in the sum of \$7300 plus \$100 in respect of the cost of the filing fee for a total of \$7400.

Landlord's Claim:

With respect to each of the landlord's claim I find as follows:

- a. I dismissed the landlord's claim of \$3650 for the non-payment of the rent for April 2017 for the reasons set out above. The landlord submitted the tenant has no right to take advantage of the right to the equivalent of 1 month rent for April 2017 as the 10 day Notice to End Tenancy dated May 19, 2017 supersedes the 2 month Notice to End Tenancy making it null and void. I determined the triggering event that provided the tenant with the right to the equivalent of one month rent was the service of the 2 month Notice to End Tenancy and not which Notice may have ended the tenancy.
- b. I dismissed the landlord's claim to recover settlement money paid to the new tenants after they alleged the tenant harassed them for the following reasons:
  - I video produced by the tenant indicates the interaction between the new Tenants and the Tenant was civil and does not amount to harassment or a breach of the covenant of quiet enjoyment.
  - Even if the interaction had been more significant this may have given rise to the new tenants claiming against the tenant in Small Claims Court. However, the landlord failed to prove that he is liable to the new Tenants for the conduct of a previous Tenant that had vacated the rental unit 2 ½ months prior.
- c. I dismissed the landlord's claim of \$100 for the cost of transport for the reasons set out above.
- d. As the landlord has not been successful I dismissed the landlord's claim to recover the cost of the filing fee.

Conclusion:

I dismissed the landlord's claim.

I ordered that the landlords pay to the Tenant the sum of \$7300 plus \$100 for the cost of the filing fee for a total of \$7400.

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.

**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: March 29, 2018

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Residential Tenancy Branch