



# Dispute Resolution Services

Page: 1

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 \$10,594.
- 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 was served on the landlord by mailing, by registered mail to where the landlord resides on September 8, 2018.. 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 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 on February 1, 2017 when the parties entered into a month to month tenancy agreement in writing. The rent was \$2100 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$1050 on February 1, 2018.

The tenant testified the parties discussed this would be a long term tenancy.

At the end of April the landlord contacted the tenant and told him he was facing financial difficulties and would have to sell his unit. The landlord testified he offered to sell to the tenant for \$70,000 under market value. The tenant attempted to get financing but was unable to find a lender to lend him sufficient money to purchase the property.

On May 4, 2018 the landlord served a 2 month Notice to End Tenancy on the Tenant. The ground set out in the Notice was that the landlord or his family would be moving in. The Notice failed to set out an end of tenancy date. The landlord was advised of this problem at the end of June. However the parties agreed the end of tenancy would be the end of July. The tenant took advantage of his right to the equivalent of one month rent as he is entitled to do under the Act and applied this to the rent for July 2018.

The tenant vacated at the end of July. The landlord immediately moved into the rental unit and began renovations. The rental unit was listed for sale at the start of September and was sold around the middle of October.

Analysis:

With regard to each of the tenant's claims I find as follows:

- a. The tenant seeks the sum of \$4200 which is the equivalent of two months rent under section 51(2) of the Residential Tenancy Act. That section provides as follows:

Section 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.

I determined the tenant is entitled to the sum of \$4200 for the equivalent of 2 months rent. The ground set out in the Notice was for landlord use. The rental unit was not used for the stated purpose for at least 6 months as it was sold around the middle of October.

- b. I dismissed the tenant's claim of \$218.41 for the cost of renting a moving truck. The tenant did not file an Application to dispute the 2 month Notice to End Tenancy and as a result the Act provides he is deemed to have accepted the end of the tenancy. The landlord had a legal right to serve the 2 month Notice to End Tenancy as this was a month to month tenancy and not a fixed term. Approximately 15 years ago the legislation provided that a tenant could claim reasonable moving expenses when the tenant was served with a 2 month Notice. The legislature amended the Act to remove the claim for reasonable moving expenses and replace it by giving the tenant the right to claim the equivalent of one month rent. The tenant has received this benefit. I determined it was not appropriate to award the tenant the cost of renting a moving truck as the tenant failed to prove the landlord breached the Act, regulations or tenancy agreement and he has been compensated by receiving the equivalent of one month rent which he applied to the rent for July.
- c. I dismissed the tenant's claim of a U-Haul storage locker in the sum of \$1726.05 for the same reasons set out above. The tenant testified he moved to a smaller rental property and needed to rent the additional space at the storage locker. However, the tenant failed to provide evidence as to the amount of rent he was paying at he new place.
- d. I dismissed the tenant's claim of \$3500 for breach of the covenant of quiet enjoyment and harassment. The tenant testified he is entitled to this claim for the following reasons:
- The landlord asked that he leave his mail out so that he could pick it up when the tenant was not home. The tenant left it out on a daily basis but the landlord failed to pick up his mail
  - The landlord texted him about leaving his garbage cans out. Many other tenants leave the garbage cans out. His wife's friend who is a member of the strata council never complained to them about the garbage cans.
  - The landlord gave him an excessive number of text messages.

The landlord testified he texted about the garbage can as he received a demand letter from the strata. Further, he texted the tenant but the tenant often failed to respond to his texts.

Policy Guideline #2 includes the following provision:

**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I determined the complaints of the tenant do not amount to a substantial interference with the use of the rental unit and do not amount to a breach of the covenant of quiet enjoyment. At best they amount to an inconvenience which does not amount to a breach of the entitlement to quiet enjoyment. This claim is dismissed.

- e. I dismissed the tenant's claim of \$850 for loss wages. The tenant failed to present evidence to prove this claim. Further, this claim is not a foreseeable loss resulting from the landlord breaching the provisions of the Act, regulations and order tenancy agreement.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$4200 plus the sum of \$100 in respect of the filing fee paid for a total of \$4300.

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 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