



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC and O

### Introduction

This hearing was convened to address the Tenants' Application for Dispute Resolution in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), *Residential Tenancy Regulation* or the tenancy agreement and for "other". It is abundantly clear from the Monetary Order Worksheet submitted with the Application for Dispute Resolution that the Tenants are seeking to recover the fee for filing the Application for Dispute Resolution, and that matter will therefore be considered at these proceedings.

The male Tenant stated that on September 20, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents in the mail and I find that these documents have been served in accordance with section 89 of the Act.

On March 14, 2018 the Tenants submitted 28 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was posted on the Landlord's door sometime later in March. The Landlord stated that he located these documents in his mailbox. As the Landlord acknowledged receiving the evidence, I find that it was sufficiently served pursuant to section 71(2)(c) of the Act, and it was accepted as evidence for these proceedings.

On March 15, 2018 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Landlord stated that he "thinks" this evidence was served to the Tenants by registered mail, although he does not know the date of service. The male Tenant stated that this evidence was received by his wife, via email, on March 16, 2018,

who provided it to him. As the Tenants acknowledged receiving the evidence, I find that it was sufficiently served pursuant to section 71(2)(c) of the *Act*, and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

### Issue(s) to be Decided

Are the Tenants entitled to compensation pursuant to section 51(2) of the *Act* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Tenant and the Landlord agree that this tenancy began prior to the Landlord purchasing the rental unit.

The Tenant stated that at the end of the tenancy the monthly rent was \$875.00. The Landlord does not dispute this testimony.

The Tenant stated that his former landlord served him with a Two Month Notice to End Tenancy for Landlord's Use of Property which required him to vacate the rental unit by December 31, 2016. The Landlord does not dispute this testimony.

The Tenant submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property. The Notice declares that the tenancy is ending because all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The Tenant submitted a copy of a document titled "TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION". The Landlord stated that he signed this notice for the purposes of informing the seller that he or a close family member intended to occupy the rental unit.

The Tenant stated that he vacated the rental unit on December 31, 2017. The Landlord does not dispute this testimony.

The Landlord stated that he took possession of the rental unit on January 03, 2017.

The Landlord and the Tenant agree that when this property was purchased there was an upper and lower suite in the residential complex, and that the Tenant was living in the upper suite.

The Landlord stated that when he purchased the rental unit he intended to renovate the residential complex; to have his domestic partner live in the rental unit; and to use the lower suite for an office and a personal living space for himself. He stated that by the time the renovations were complete his domestic partner was unable to live in the rental unit due to his deteriorating health.

The Landlord stated that he “gutted” and fully renovated the rental unit. He stated that he periodically lived in the rental unit and the lower suite during the renovations and that he moved to a bed and breakfast when renovations prevented him from staying in the unit. He stated that he is now living in the lower suite.

The Landlord stated that he decided to rent the rental unit once it was determined his domestic party would not be occupying the unit. He stated that a friend advertised the unit for him sometime in March or April; that he began showing the unit sometime in March or April; and that it was re-rented on June 02, 2017.

Copies of internet advertisements from April and May of 2017 were submitted in evidence which indicate the newly renovated rental unit is being offered for rent.

The Tenant stated that the rental unit was first advertised on April 17, 2017. He contends that the photographs included with the advertisement show that the rental unit was fully renovated at the time the advertisement was posted.

The Landlord stated that the photographs included with the advertisement do not show that the rental unit was fully renovated at the time the advertisement was posted. He stated that the carpet and window coverings had not yet been installed when those photographs were taken.

The Tenant stated that the advertisements indicate the unit is “available now”. The Landlord stated that this was a mistake and that the advertisement should have indicated it is “available for showing now”.

### Analysis

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property that declared the tenancy was ending because all of the conditions for the sale of the rental unit were satisfied and the purchaser had asked the landlord, in writing, to give the Notice because the purchaser or close family member intended in good faith to occupy the rental unit.

On the basis of the testimony of the Landlord and in the absence of any evidence to the contrary, I find that when the Landlord purchased the rental unit he intended to renovate the residential complex for the purposes of having his domestic partner live in the rental unit. On the basis of the undisputed evidence I find that the Landlord's domestic partner did not move into the rental unit.

On the basis of the testimony of the Landlord and in the absence of any evidence to the contrary, I find that the Landlord renovated the residential complex and that he periodically lived in the rental unit while it was being renovated.

On the basis of the testimony of the Landlord I find that this rental unit was advertised for rent in April of 2017. On the basis of the testimony of the Landlord and in the absence of any evidence to the contrary, I find that the rental unit was re-rented on June 02, 2017.

Section 51(2)(b) of the *Act* stipulates that if the rental unit is not used for the stated purpose for ending the tenancy under section 49 of the *Act* 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 of the *Act*, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the Landlord was only living in the rental unit and renovating it for five months after this tenancy ended and it was re-rented in the sixth month, I find that the unit was not used by the Landlord or a close family member for a period of at least six months. I therefore find that the Landlord must pay the Tenant \$1,750.00, which is the equivalent of double the monthly rent.

I find that the Tenant's application has merit and that he is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$1,850.00, which includes \$1,750.00 for compensation pursuant to section 51(2)(b) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$1,850.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of the 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: April 10, 2018

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Residential Tenancy Branch