



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, FF (Tenant's Application)  
                                 MNDC, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution she sought compensation equivalent to two months' rent pursuant to section 51(2) of the *Residential Tenancy Act*, as well as moving costs. In the Landlord's Application for Dispute Resolution she sought monetary compensation in the amount of \$34,603.80 for damage to the rental unit and breach of an alleged verbal agreement that the Tenant would be responsible for the landscaping at the rental unit. Both parties also requested recovery of the filing fee.

The hearing was conducted by teleconference on April 10, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

### Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act*?
2. Is the Tenant entitled to recover her moving costs?
3. Is the Landlord entitled to monetary compensation from the Tenant?
4. Should either party recover the filing fee?

## Background Evidence

The parties confirmed that the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use in the approved form as required by section 49 and 52 of the *Residential Tenancy Act*; rather, the parties communicated in late April 2017 by email and text message regarding the Landlord's request to regain possession of the rental unit. This communication was provided in evidence and confirmed that the parties agreed the tenancy would end at the end of August 2017.

The Landlord's agent, N.P., asked if the Landlord would be able to pursue her claim in the B.C. Provincial Court (Small Claims Division) and was informed that the Residential Tenancy Branch has exclusive jurisdiction over residential tenancy matters.

The Landlord confirmed during the hearing that she "never wanted money from the Tenant" and only made her claim for breach of the alleged oral agreement in response to the Tenant's claim. She further confirmed that she returned the Tenant's security deposit at the end of the tenancy. The Landlord did not make any submissions or provide any testimony in support of her monetary claim.

## Analysis

A tenancy may only end in accordance with section 44 which reads as follows:

### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The evidence before me indicates the parties discussed the Landlord's desire to regain possession of the rental unit and agreed upon a mutual date to end the tenancy. As such, this tenancy ended pursuant to section 44(1)(c), not section 49 (Landlord's Use).

A Tenant must receive a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*, before they are entitled to compensation pursuant to section 51. Section 49 must be read in conjunction with section 52 which provides that a notice issued pursuant to section 49 must be in the approved form: which in this case is #RTB - 32. As the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use on Form 32, the Tenant is not entitled to compensation pursuant to section 52. I therefore dismiss this portion of her claim.

The Tenant also sought compensation for moving costs. As tenants are not guaranteed perpetual occupation, moving costs are an inevitable cost of a renting and are not recoverable under the *Act*. I therefore dismiss this portion of her claim.

The party bringing a claim bears the burden of proving their claim on a balance of probabilities. As noted, the Landlord indicated she wished to withdraw her claim against the Tenant and failed to make any submissions in support of her claim.

I asked the Landlord to confirm she did not want to pursue monetary compensation from the Tenant and wished to withdraw her claim of \$34,603.80. She confirmed on three separate occasions that she wished to withdraw her claim.

On the basis of the Landlord's submissions, and failure to advance her claim, I dismiss her claim without leave to reapply.

### Conclusion

The Tenant's claim for compensation pursuant to section 51(2) and her claim for moving costs are dismissed without leave to reapply.

The Landlord's monetary claim is dismissed without leave to reapply.

As neither party was successful in their application, they shall bear the cost of their respective filing fees.

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