



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDCT

### Introduction

This hearing was convened in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement.

The Tenant stated that on November 03, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted to the Residential Tenancy Branch were served to the Agent for the Landlord, via registered mail, at the service address noted on the Application. The Agent for the Landlord acknowledged receiving these documents, although he cannot recall how they were served.

As the Agent for the Landlord acknowledged receipt of the aforementioned documents, I accept the evidence 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

Is the Tenant 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 of the *Act* 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?

### Preliminary Matter #1

The Tenant stated that she named the realtor as the Respondent in this matter because she believes he was acting as an agent for the new owner/landlord of the rental unit. She stated that she believes he was acting as an agent for the new owner/landlord of the rental unit because his name is listed as a contact person on the internet advertisement that was posted on May 20, 2017, in which the rental unit was advertised for rent.

The Agent for the Landlord acknowledged that his name appears on the internet advertisement that was posted on May 20, 2017, in which the rental unit was advertised for rent.

The Agent for the Landlord stated that he was the realtor who assisted the new owner with the purchase of this rental unit. He stated that he has shown the rental unit to potential tenants, at the request of the new owner of the rental unit. He stated that apart from showing the rental unit to new tenants, he has not assisted the new owner in regards to renting the unit.

The *Act* defines a landlord, in part, as the owner of the rental unit, the owner's agent or another person who, on behalf of the Landlord permits occupation of the rental unit under a tenancy agreement or who exercises powers and performs duties under the *Act*, the tenancy agreement, or a service agreement.

Residential Tenancy Branch Policy Guideline #26 stipulates, in part, that:

An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent. Where a party chooses to attend the hearing, they are entitled to remain with their agent throughout.

Unlike advocates, agents have full authority to settle the claims and may be named as a party to the dispute.

An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant<sup>3</sup>
- Prepare, organize, serve and submit evidence
- Make submissions on behalf of the party
- Ask questions of the other party and witnesses with respect to their evidence
- Settle claims

I find that the Agent for the Landlord should be considered an agent for the Landlord. In reaching this conclusion I was influenced, in part, by the fact he is the contact person named on the internet advertisement that was posted on May 20, 2017, in which the rental unit was advertised for rent. I find that this very clearly indicates that Landlord wanted the Agent for the Landlord to act on behalf of the Landlord in regards to renting this rental unit.

In concluding that the Agent for the Landlord should be considered an agent for the Landlord I was influenced, in part, by the fact the Agent for the Landlord acknowledged showing the rental unit to potential tenants. I find that this very clearly indicates the Agent for the Landlord's willingness to act on behalf of the Landlord in regards to renting this rental unit.

### Preliminary Matter #2

The Tenant stated that she did not name the new owner of the rental unit as a Respondent in this matter because she does not have any contact information for the new owner.

The Agent for the Landlord stated that he is not willing to provide the service address of the new owner of the rental unit until such time as he receives permission from the new owner to release that information. He stated that he is able to communicate with the new owner, via email.

As the Agent for the Landlord was not willing to provide the service address for the new owner, I find it is not appropriate to amend the Application for Dispute Resolution to include the new owner as a Respondent. The Tenant will be granted a monetary Order naming the Agent for the Landlord's company, which can then take appropriate steps to seek compensation from the new owner.

### Background and Evidence

The Tenant stated that:

- this tenancy began on July 01, 2015;
- the rent was \$1,100.00;
- she vacated the rental unit on May 31, 2017;
- on March 17, 2017 a Two Month Notice to End Tenancy for Landlord's Use of Property was placed under the door of the rental unit;
- this Notice to End Tenancy declared that she must vacate the rental unit by May 31, 2017;
- this Notice to End Tenancy declared that the tenancy was 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit; and
- she located an advertisement in which the rental unit was advertised for rent; and
- the advertisement was posted on a popular website on May 20, 2017;
- the advertisement declared the unit was available for rent on June 01, 2017.

The Agent for the Landlord stated that:

- he does not know any of the terms of the Tenant's tenancy;
- he acted on behalf of the new owner in regards to the sale of the rental unit;
- the new owner asked the previous owner of the rental unit, in writing, to give the Notice because the new owner intended to occupy the rental unit;
- he understands that the Tenant was served with a Notice to End Tenancy because the new owner intended to move into the rental unit;

- he believes the new owner moved into the rental unit, although he does not know how long they lived in the unit;
- the new owner subsequently moved out of the country; and
- he understands the new owner re-rented the rental unit but, because he was not involved with that agreement, he does not know when it was re-rented.

### Analysis

On the basis of the undisputed evidence I find that:

- the Tenant was paying monthly rent of \$1,100.00;
- the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, that required her to vacate the rental unit by May 31, 2017;
- the Notice to End Tenancy declared that the tenancy was 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit; and
- the Tenant vacated the rental unit on May 31, 2017.

On the basis of the undisputed evidence I find that the Landlord was attempting to find new tenants for the rental unit in May of 2017, effective June 01, 2017.

Section 51(2) of the *Act* stipulates that if 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 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.

On the basis of the testimony of the Agent for the Landlord I find that the new owner of the rental unit lived in the unit for an unknown period of time but the new owner subsequently moved out of the country. On the basis of this testimony and the fact the rental unit was advertised for rent, effective June 01, 2017, I find it reasonable to conclude that the new owner did not occupy the rental unit for at least 6 months. I therefore find that the new owner must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement, which is \$2,200.00.

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

### Conclusion

I find that the Tenant has established a monetary claim of \$2,300.00, which includes \$2,200.00 in compensation pursuant to section 51(2) 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 \$2,300.00. In the event that this amount is not paid to the Tenant, this Order may be served on the Agent for 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: June 07, 2018

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Residential Tenancy Branch