



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNDC, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant on May 10, 2016 makes the following claims:

- a. A monetary order in the sum of \$4000
- 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:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy 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 September 1, 2014. The rent was rent of \$1450 per month payable in advance on the first day on the first day of each month. The tenant(s) paid a security deposit of \$725.

Around the middle of March 2016 the landlord served a 2 month Notice to End Tenancy on the Tenant that set the end of tenancy for April 1, 2016.

The tenant failed to pay the rent for April 2016 when due. The landlord served a 10 day Notice to End Tenancy. The tenant did not dispute the Notice. On April 19, 2016 the landlord made a Direct Request application and obtained an Order of Possession and a monetary order in the sum of \$1500 for non payment of the rent for April.

The Order of Possession was served on the Tenant requiring her to vacate on 2 days notice.

The tenant failed to vacate the rental unit. There is communication between the landlord and a person who represented he was acting on behalf of the tenant about when the Tenant was going to leave.

The tenant failed to vacate by Sunday, May 15, 2016. The next day the landlord obtained a Writ of Possession from the Supreme Court of British Columbia and hired a bailiff. On May 16, 2016 the Tenant removed her belongings after the bailiff served the Tenant with the Writ of Possession.

In December 2016 the landlord garnished the Tenant's wages pursuant to the monetary order she received for the non payment of the rent for December in the sum of \$1500 and \$455.44 Provincial Court fees. The Tenant has now paid a sum equal to those claims.

The tenant reduced her claim to \$2202.07 which is composed of the following items:

- a. \$1500 for the equivalent of one month rent as she was served with a 2 month Notice to End Tenancy.
- b. \$70.32 for the cost of a U-Haul trailer to remove her belongings.
- c. \$176.31 for a storage bin
- d. \$455.44 for Provincial Court fees (garnishing costs)

## Law

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The landlord served a 2 month Notice to End Tenancy on the tenant at the middle of March 2016. The tenant failed to pay the rent for April 2016 but failed to advise the landlord she was applying her right under section 51(1) to the rent for April. The landlord served a 10 day Notice to End Tenancy and the Tenant failed to dispute it. The landlord subsequently obtained a monetary order for non payment of the rent for April. The rent for April was paid some time later as a result of the garnishing order obtained by the landlord.

I do not accept the submission of the landlord that the landlord does not have to pay the equivalent of one month rent because the tenancy ended because of the 10 day Notice to End Tenancy. The obligation to pay the equivalent of one month rent is triggered by the service of the 2 month Notice to End Tenancy. It is not triggered by how the tenancy came to an end.

I determined the Tenant is entitled to the equivalent of one month rent. However, the Tenant remained in the rental unit until May 16, 2016. The tenant did not pay any rent for May 2016. I determined the tenant's claim for the equivalent of one month rent should be reduced by the 16 days she stayed in the rental unit. The tenant is entitled to \$701.16 (\$1450 divided by 31 days in the month multiplied by 15 days = \$701.16).

I dismissed the Tenant's claim of \$70.32 for the cost of the U-Haul trailer and \$176.31 for the cost of the storage bin. Once the landlord obtained an Order of Possession the landlord had a legal right to enforce that Order of Possession. The tenant's remedy was to dispute the 10 day Notice to End Tenancy.

I dismissed the Tenant's claim to recover the cost of the Provincial Court fees (garnishing costs) in the sum of \$455.44. This is a matter for the Provincial Court and an arbitrator has not jurisdiction to interfere or vary that order.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$701.16 plus the sum of \$100 in respect of the filing fee for a total of \$801.16.**

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: July 13, 2018

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Residential Tenancy Branch