



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing was convened in response to an Application for Dispute Resolution filed by the tenant September 12, 2018 seeking a Monetary Order for compensation for loss under Section 51(2) of the Act, and to recover the filing fee from the respondent.

The tenant and both of the landlords attended and participated in the conference call hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving the evidence of the other as also submitted to this proceeding. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to monetary compensation pursuant to Section 51(2) of the Act, and if so in what amount? Is the tenant entitled to recover their filing fee?

### **Background and Evidence**

The *relevant* evidence is as follows. The tenancy started in 2013 and ended August 30, 2018. The tenant testified that on July 01, 2018 the landlord's son and purported friend of the tenant, M.M., asked the tenant to vacate the rental unit so as they could occupy it. The tenant testified that they always looked to the landlord's son as their landlord. The tenant testified that one month of 2018 M.M. adjusted the payable rent amount however the owed rent was paid as usual by e-transfer to the landlords of record. The tenant testified they orally agreed with the landlord's son to end the tenancy and vacate the unit as requested. The tenant testified that subsequently they reminded the landlord of record, in attendance, by e-mail for a *written notice and written termination of tenancy*, to no avail. None the less, the tenant testified they voluntarily moved forward with their determination to move, requesting the landlord for a reference letter in mid-July 2018.

The landlord complied and within the reference letter the landlord stated giving the tenant notice so as to accommodate family into the rental unit.

The landlord testified they never authorized their son to end the tenancy and it is undisputed that the tenant has never received a (legal) Notice to End in the approved form from the landlord. The landlord testified the wording in their reference letter was intended to aid the tenant by averting misperception of why the tenant was moving. The tenant soon after secured new accommodations and vacated August 30, 2018. It is undisputed that M.M. has never occupied the rental unit. A week after the tenant vacated they learned that a new tenant occupied the unit.

### **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

On preponderance of the evidence I find as follows. I find that the tenant has not provided sufficient evidence to satisfy me that the landlord's son meets the Act's definition of "*landlord*". The tenant may well have considered M.M. as representing the landlord, but I have not received sufficient evidence that M.M. ever permitted occupation of the rental unit under a *bona fide* agreement or exercised any powers or performed duties under the Act, or the tenancy agreement as prescribed by the Act definition.

I find that it is undisputed the tenant has never received a Notice to End Tenancy for Landlord's Use pursuant to Section 49 of the Act. In respect to the tenant's claim for compensation, the Act states as follows in respect to compensation due a tenant under a Section 49 Notice. **Section 51** of the Act, in those parts relevant to this matter, states,

#### **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.

And,

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

**Section 52** of the Act provides as follows:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that a tenant's right to compensation under **Section 51** effectively is not triggered unless the landlord gives a notice under section 49, which must be on the approved form pursuant to **Section 52**.

The tenant testified that the only semblance of a "notice" to the tenant was by way of a verbal request by the landlord's son M.M. on July 01, 2018. I find that the landlord son's verbal request was not effective to end a tenancy. I find that the tenant did not receive a Notice in the approved form pursuant to Section 49 and 52 (*Notice to End Tenancy for Landlord's Use*), and therefore the tenant's right to compensation under **Section 51** was not triggered. Although the tenant ultimately chose to vacate the rental unit pursuant to their communication with the landlord's son, it does not give the tenant a right to compensation. As a result the tenant's claim is **dismissed** in its entirety.

**Conclusion**

The tenant's application is dismissed, without leave to reapply.

**This Decision is final and binding.**

*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: January 22, 2019

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Residential Tenancy Branch