



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE RESIDENTIAL GROUP REALTY  
(TRG) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the adjourned hearing for the Tenant's application filed on October 31, 2018, for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to request a monetary order for compensation under the *Act* and to recover the cost of the filing fee. The matter was set for a conference call.

The Tenant and the Property Manager attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Property Manager were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Property Manager testified that they received each others documentary evidence that I have before me.

As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord and the Property Manager with the original Notice of Hearing documents by Canada Post Registered mail, sent on November 7, 2018, and November 8, 2018, two Canada post tracking number were provided as evidence of service. Additionally, the Tenant testified that she served the Landlord and the Property Manager with the amendment to her application and additional documentary evidence by Canada Post Registered mail, sent on March 15, 2019, two additional Canada post tracking number were provided as evidence of service. I also note that as the original hearing for this application had been adjourned, the Residential Tenancy Branch had served all parties to this dispute the adjourned Notice of Hearing documents by Canada Post, sent on March 1, 2019. I find that the Landlord had been duly served with the Notice of Hearing documents in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Preliminary Matter – Respondents

At the outset of the hearing, the Property Manager testified that on May 24, 2018, his realty company received written notice from the Landlord that their contract to act as property managers for the Landlord would be terminated, as of July 31, 2018. The Property Manager testified that they no longer have anything to do with the rental unit and that they do not believe they should be listed as a respondent in this matter. The Property Manager submitted a copy of the termination letter he received into documentary evidence.

The Property Manager requested that the realty company be removed from the list of respondents to this matter.

The Tenant did not dispute the Property Managers request and agreed that the realty company should be removed from the listed respondents to these proceedings.

I find it appropriate to remove the realty company from the listed respondents to this matter, and I will proceed in this hearing against the remaining respondent, the Landlord.

#### Preliminary Matter – Jurisdiction

The Tenant submitted an application amendment request to the Residential Tenancy Branch on March 11, 2019, requesting that the dollar amount of her claim be increased to \$39,372.75, which exceeds the current small claims limit, of \$35,000.00.

I have reviewed the Tenant's original application and application of amendment, and I find that the Tenant entire claim falls under section 51 of the *Act*. The Residential Tenancy Policy Guideline on Jurisdiction states the following:

##### **Small Claims Limit**

“If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if

the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration.”

As this claim falls under section 51 of the *Act*, I accept jurisdiction over this matter.

### Issues to be Decided

- Is the Tenant entitled to compensation pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began on September 17, 2016, as a one-year fix term, that rolled into a month to month at the end of the initial term of the tenancy. Rent in the amount of \$3,068.00 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$1,475.00 security deposit at the beginning of the tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence. The Tenant testified that one rent increase had been issued during her tenancy.

The Tenant testified that she received a Two-Month Notice to End Tenancy for Landlord's Use of Property on May 29, 2018, issued through the Landlord's Property Manager. The notice indicated an effective end of tenancy date of July 31, 2018. A copy of this notice was submitted into evidence. The reason checked off by the Landlord within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*

The Tenant testified that she secured a new rental unit quickly and issued a 10-day notice to the Landlord on June 25, 2018.

The Tenant testified that she moved out of the rental unit, in accordance with her Notice on July 5, 2018, and that the move-out inspection had been conducted and the security deposit had been returned in accordance with the *Act*.

The Tenant testified that she used the one-month rent compensation due to her as her July 2018 rent; however, she did not receive the pro-rated return of her rent for July 2018, as required, pursuant to section 51 of the *Act*. The Tenant requested the pro-rated return of the July rent, from July 6 to 31, 2018, as she had moved out of the rental unit before the end of the month and therefore did not receive the full month's rent in compensation.

The Tenant also testified that she heard that the rental property had been re-rented as of August 2018 and that the Landlord or a member of their family, never moved into the rental unit. The Tenant testified that she hired a Private Detective to confirm whether the rental unit had been re-rented or if the owner had moved in. The Tenant submitted an affidavit from a Private Detective into documentary evidence.

The Private Detective states in their affidavit that they spoke to the current occupants of the rental unit who confirmed they were renters and that one of the renters had been living in the rental unit since October 2018. The current occupants had also told the Private Detective that there were several international students living in the rental unit.

The Private Detective also stated in their affidavit that they spoke to the concierge for the rental property, and that they had confirmed that the rental unit had been immediately re-rented to another individual, after the Tenant moved out, and that there seemed to be a steady stream of short-term renters living in the rental unit, as of August 2018.

Additionally, the Tenant submitted a copy of a Freedom of Information Request (FOI), she had made to the local hydro company, into documentary evidence. The Tenant testified that the FOI showed that the hydro account for the rental unit had been in the name of a private company since the day after she moved out, July 6, 2018. The Tenant also testified that she had completed a Provincial and Federal search of the private company and that the Landlord was not listed as an owner or director for that company. The Tenant submitted a 10-page report of her search of the private company into document evidence.

The Tenant is requesting the 12-month compensation due under the *Act*, for the rental property not being used as indicated on the Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51 of the *Act*. I note that section 51 of the *Act* was amended on May 17, 2018. Therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

The royal assent for the legislated amendments was received on May 17, 2018 and stated that the amendments apply to all notices issued as of the date of royal assent and onwards.

I accept the Tenant's testimony that she received the Landlord's Two-Month Notice to end her tenancy on May 29, 2018. Therefore, I find that the Notice was issued after the date of royal assent and falls under the form and content of the updated legislation.

In this case, the Tenant is seeking compensation pursuant to section 51(1) and 51(2) of the *Act*, which states the following:

**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.

(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.

I accept the testimony of the Tenant that the Landlord served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of July 31, 2018. I also accept the testimony of the Tenant that she had used the one-month compensation due to her, pursuant to section 51 of the *Act*, as the rent for July 2018.

Pursuant to section 50 of the *Act*, a tenant who is in receipt of a notice to end their tenancy under section 49 of the *Act* has the right to end their tenancy earlier than the effective date of the notice by giving the landlord at least 10 days' written notice.

**Tenant may end tenancy early following notice under certain sections**

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

I accept the testimony and documentary evidence submitted by the Tenant, showing that she had issued 10-days notice to end the tenancy earlier than the effective date of the Landlord's Notice, on June 25, 2018. Consequently, I find that this tenancy ended when the Tenant moved out of the rental unit in accordance with her notice, on July 5, 2018.

Accordingly, I find that the Tenant is due the pro-rated return of her July 2018 rent, pursuant to section 50(2) of the *Act* for the period of time in July 2018 that she did not occupy the rental unit. Therefore, I award the Tenant the return of her July 2018 rent in

the amount of, \$2,573.16; consisting of the return of 26 days of rent for the period between July 6 to July 31, 2018, at a per perm rate of \$98.97 per day.

In regard to the Tenant's claim pursuant to section 51(2) of the *Act*, I have reviewed the testimony and documentary evidence submitted by the Tenant and I find, on a balance of probabilities, that the Landlord has not used the property for the purpose stated on the Notice and has instead re-rented the property, as of August 2018.

Therefore, I find that the Tenant has met the onus of proving her claim under section 51(2) of the *Act*. Accordingly, I award the Tenant compensation in the amount of \$36,816.00, which is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

I grant the Tenant a monetary order of \$39,489.16, consisting of \$2,573.16 for the pro-rated return of rent for July 2018, \$36,816.00 in compensation and the recovery of the \$100.00 filing fee for this hearing.

### Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$39,489.16**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court; however, if the Tenant wishes to abandon the amount over \$35,000.00, then it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 23, 2019

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Residential Tenancy Branch