



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

In this dispute, the tenant seeks compensation under sections 51 and 67 of the *Residential Tenancy Act* (the “Act”).

The tenant applied for dispute resolution on December 28, 2018 and a dispute resolution hearing was held on April 18, 2019. The tenant attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlords did not attend.

While the tenant did not testify as to how or when the landlords were served a Notice of Dispute Resolution Proceeding, the landlords submitted a copy of a Form K (under the *Strata Property Act*) into evidence on April 11, 2019, and, there is an audit note on the Residential Tenancy Branch file indicating that one of the landlords called the Residential Tenancy Branch on April 4, 2019.

I find, based on an inference from the above evidence submission and call to the Residential Tenancy Branch, that the landlords were served with the Notice of Dispute Resolution Proceeding, pursuant to section 89 of the Act.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, but only evidence relevant to the issue of this application is considered in my decision.

### Issue

Whether the tenant is entitled to compensation under sections 51 and 67 of the Act.

### Background and Evidence

The tenant testified that the tenancy began “four or five years ago” and that rent was \$1,000.00 a month at the time the tenancy ended.

The landlords issued a Two Month Notice to End Tenancy (the “Two Month Notice”) on July 31, 2018 with the effective end of tenancy date of September 30, 2018, but the tenancy ended when he vacated the rental unit on October 31, 2018

On page 2 of the Two Month Notice the reason that the landlords were ending the tenancy was because “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

The tenant returned to the rental unit on December 1, 2018 and again on December 23, 2018 and took photographs of the rental unit. These photographs, which were submitted into evidence, show a completely empty rental unit. Since December 2018 the tenant has not re-visited the rental unit, but recently (“about two weeks ago”) spoke to a resident on the floor above the rental unit who told the tenant that the rental unit was still empty, and, that one of the landlord’s daughters had recently purchased the property.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case the tenant seek compensation under section 51 of the Act which states:

- (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.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
  - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
  - (c) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Two Month Notice stated that the “rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).” In this case, the testimony of the tenant—supported by the photographs of a barren, empty rental unit—establish that, in the absence of any contradictory evidence from the landlords, the rental unit was not and continued to not be occupied by anyone. Occasionally, occupancy will consist of nothing more than a landlord storing a toothbrush or an ashtray or something else.

However, there is nothing in this case indicating that either the landlords or one of the landlords' close family members are, or were ever, occupying the rental unit. And while I place only a little weight on the third-party hearsay evidence (that is, the person who lives in the floor above the rental unit), in the absence of any evidence to the contrary I find that the rental unit continues to be not occupied by the landlords or a close family member. From the evidence I infer that the rental unit has not been occupied for the past 5½ months.

As the landlords failed to attend the hearing there is no evidence before me to consider whether the landlords are excluded from their liability under section 51 because of extenuating circumstances, pursuant to section 51(3) of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for compensation under sections 51(2) and 67 of the Act.

Therefore, I grant the tenant a monetary award, and corresponding order, equivalent to twelve times the monthly rent that was payable under the tenancy, in the amount of \$12,000.00.

### Conclusion

I hereby grant the tenant a monetary order in the amount of \$12,000.00, which must be served on the landlords. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 18, 2019

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Residential Tenancy Branch