



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT &  
NITESH PRAKASH  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Preliminary matter

At the start of the hearing the Tenant said she has made two applications regarding the same claim because she was not sure the owner's property management company was still working for the owner. The Tenant made the second application to change the name on the application to the owners name and to adjust the monetary claim to reflect the amount of rent she actually paid. The Tenant said she is withdrawing the first application with the Property Management Company's name on it and continuing with the second application with the Landlord who is the owner of the rental unit.

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and tenancy agreement and to recover the filing fee for this application and the first application.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on March 27, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation under section 51 (2) of the Act and if so how much?

### Background and Evidence

This tenancy started in June 2015 as a month to month tenancy. Rent was \$800.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$400.00 on May 25, 2015. The Tenant said the tenancy ended on September 15, 2018, due to a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The Tenant said she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 26, 2018. The Tenant said the effective vacancy date was September 30, 2018. The Tenant said the reason on the Notice to End Tenancy was that the Landlord or a close family member was moving into the rental unit. The Tenant continued to say that no one has actually moved into the unit as of yet, but the Landlord's sister is the person who is moving into the unit. The Tenant said a sister is not considered a close family member under the Act. Only the landlord or purchaser, their parents or children are considered close family members. Consequently the Tenant said the Landlord did not comply with the Act and the Act states that the Landlord must compensate the Tenant the equivalent of 12 month at the amount of her monthly rent. The Tenant said her rent was \$800.00/month so  $12 \times \$800.00 = \$9,600.00$ .

The Tenant also requested to recover her filing fees for this application of \$100.00 and for her second application that she withdrew for an additional \$100.00.

The Landlord said he and his wife are the title holders on the property in questions, but it was a family home and the funds used to purchase it were from a previous sale of a family property. The Landlord said his sister is not on title, but he believes she has an ownership claim against the rental property, because his sister was on title of the previous home that was sold. The Landlord said this would make his sister who is the person moving into the rental unit part of the Landlord group. The Landlord said this was the intent for the reasoning behind the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord said he believes that the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is correct.

The Tenant said the Property Manager H.D. told the Tenant that the Landlord's sister was moving in and a sister is considered a close family member. The Tenant said the Property Manager H.D. was mistaken in that statement and it shows the sister was not an owner or part of the Landlord group.

The Property Manager C.L. said she was not aware of the conversation with H.D. and she was told that it was a family home and that the reason on the 2 Month Notice to End Tenancy was for the Landlord or a close family member to move into the rental unit.

The Landlord said the sister is not paying any rent, but they do have a tenancy agreement which he submitted into evidence. The Landlord said he has not provided any evidence to prove his sister is a part owner of the rental property or that she is a landlord of this property.

The Property Manager said in closing that she thought an owner or close family member was moving into the rental unit.

The Landlord said in closing he believes his sister is an investor or has a legal claim against the property, but he has not submitted any evidence to prove it. Further the Landlord said he believes the sister has a right to live in the rental unit as she is part of the family group that purchased the property. The Landlord said they had no ill intentions when the Notice to End Tenancy was issued.

The Tenant said in closing the Landlord's mother wanted to end the tenancy because she did not like the Tenant's son and she believes the Landlord wanted to end the tenancy so that they could increase the rent. The Tenant said the sister is not a close family member as defined by the Act, therefore the Landlord owes the Tenant compensation of 12 months of rent at \$800.00 for each month in the amount of \$9,600.00.

### Analysis

Section 51 of the Act says:

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.**

(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

(b) 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..

I accept the testimony from both the Tenant and the Landlord that the Landlord's sister is the person who has the tenancy on the rental unit as of November 1, 2018. The Landlord submitted the tenancy agreement as proof. Further, as there is no evidence to support the Landlord's claim that the sister has an ownership position on the property containing the rental unit: I find the Landlord's sister is not a landlord of this property. The sister is the new tenant of the rental unit.

Further section 49 of the Act says:

Landlord's notice: landlord's use of property

49 (1) In this section:

**"close family member" means, in relation to an individual,**

**(a) the individual's parent, spouse or child, or**

**(b) the parent or child of that individual's spouse;**

Consequently, I find the Landlord's sister is not a close family member as defined by the Act. I find that the Tenant has established grounds to prove the Landlord did not complete the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 26, 2018 "the landlord or a close family member was moving into the rental unit". As well I understand the Property Manager issued the Notice to End Tenancy and I believe there may have been some communication issues which are

regrettable. I award the Tenant compensation as dictated by the Act, in the amount of 12 times the monthly rent of \$800.00 in that amount of \$9,600.00.

Further as the Tenant withdrew the application naming the Property Manager, I dismiss the Tenant's request to recover that filing fee, but as the Tenant has been successful in this application, therefore I award the Tenant an additional \$100.00 to recover the filing fee for this application.

The grant the Tenant a monetary order for \$9,700.00

### Conclusion

A Monetary Order in the amount of \$9,700.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 06, 2019

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Residential Tenancy Branch