



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 28, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- a monetary order for compensation.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on March 6, 2019. The Tenant provided the Canada Post registered mail tracking information in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on March 11, 2019, the fifth day after the registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 Matters

### Latest time application for dispute resolution can be made

According to 60 of the *Act*, if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

In this case, the Tenant stated that the tenancy ended on February 28, 2017. The Tenant made her Application on February 28, 2019.

According to the 25.4 of the *Interpretation Act*, (1) Subject to subsection (2), the beginning or end of a period of one year or consecutive years, expressed in relation to a reference day, is to be determined as follows:

*(a) if the reference day is before the period, by going forward to and including the date numerically corresponding to the reference day in the same calendar month as the reference day in the year in which the period begins or ends, as the case may be.*

In this case, I find that the “reference day” is February 28, 2017, the date the tenancy ended. According to the *Interpretation Act* the reference day is at the beginning of the two year period in section 60 of the *Residential Tenancy Act*. As such, I find that the Tenant’s Application made on February 28, 2019 is within the 2 year period pursuant to Section 60 of the *Act*.

### Res Judicata

During the hearing, it was discovered that the Tenant had taken part in a previous Residential Tenancy Dispute Resolution Hearing on March 14, 2017 during which the Arbitrator order a portion of the Tenant’s security deposit be returned to the Tenant. As a result of the March 14, 2017 hearing, the Tenant was awarded a monetary order for the remaining portion of the Tenant’s security deposit.

The Tenant stated that the Landlord has not yet complied with the monetary order; therefore, the Tenant was seeking further compensation during this hearing.

I find that the right to the security deposit has already been determined; therefore, this matter is *res judicata*, meaning that the matter has already been adjudicated upon and therefore, cannot be re-heard again.

As such, I deny reconsideration of this matter during this hearing and subsequently dismiss the Tenant's claim for the return of her damage deposit without leave to reapply.

#### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

#### Background and Evidence

The Tenant testified that the tenancy began on July 1, 2008. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,011.00 to the Landlord on the first day of each month. The Tenant stated that the tenancy ended on February 28, 2017.

The Tenant stated that the Landlord served her in person on January 29, 2017 with a Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two Month Notice") dated January 29, 2017, with an effective vacancy date of March 30, 2017. The Tenant submitted a copy of the Two Month Notice in support. The Tenant stated that the Landlord's reason for ending the tenancy on the Two Month Notice was;

*"All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."*

The Tenant stated that after receiving the Two Month Notice, she found a new residence and provided the landlord with her notice to end tenancy in writing on February 11, 2017 before moving out of the rental unit on February 28, 2019 in compliance with the Two Month Notice. The Tenant stated that she paid rent in full when due in February 2017. The Tenant stated that the Landlord agreed to compensate the Tenant an amount equal to one month's rent payable under her tenancy agreement once the Tenant moved out of the rental unit.

The Tenant stated that she provided the Landlord with her forwarding address in writing on February 11, 2017 along with a request that the Landlord send her the compensation owed at the end of the tenancy. The Tenant stated that she has not received any compensation from the Landlord. As such, the Tenant is seeking a monetary order in relation to the compensation owed to the Tenant.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] 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*].

Section 51(1) of the *Act* states;

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. 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.

In this case, the Tenant testified the rent in the amount of \$1,011.00 was due to the Landlord on the first day of each month. I accept that the Landlord served the Tenant in

person with a Two Month Notice on January 29, 2017 with an effective vacancy date of March 30, 2017.

I accept that the Tenant provided the Landlord with her Notice to end tenancy as well as her forwarding address in writing on February 11, 2017 with an effective vacancy date of February 28, 2017. I accept that the Tenant paid rent in full for February 2017 and has not yet received compensation from the Landlord.

In light of the above I find that Tenant is entitled to compensation equivalent of one month's rent payable under the tenancy agreement, pursuant to Section 51 of the *Act*.

I accepted the Tenant's uncontested testimony that she has not yet been compensated by the Landlord; therefore, Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,011.00 which represents the amount that is the equivalent of one month's rent payable under the tenancy agreement.

### Conclusion

The Landlord breached the Act by not compensating the Tenant in accordance with Section 51 of the Act. The Tenant is granted a monetary order in the amount of \$1,011.00. This order must be served on the Landlord as soon as possible. If the Landlord fails to comply the monetary order it 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 *Residential Tenancy Act*.

Dated: June 19, 2019

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Residential Tenancy Branch