



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNDCT, FFT

### **Introduction**

This hearing was convened in response to an application by the tenant for a Monetary Order pursuant to Section 51(2) of the *Residential Tenancy Act*, post May 17, 2018 (the Act), and recover the filing fee.

Both parties attended the hearing and the landlord and tenant acknowledged receiving all the evidence of the other. The representative for the respondent testified they were acting with the authority of the owners of the rental unit as their agent (the landlord). The landlord acknowledged receiving the application of the tenant. The parties provided testimony and were provided the opportunity to make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

#### *Preliminary matters*

The parties acknowledged that the named respondent in this matter was the owner's agent to the end of the tenancy of November 30, 2018. The parties all agreed and consented to the addition of the owner's names in this matter as respondents to the *style of cause* (this action). Pursuant to this mutual determination and with the consent of all parties the *style of cause* has been amended to reflect the names of the 2 owners of the rental unit.

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

Is the tenant entitled to the monetary amounts claimed?

## **Background and Evidence**

I have benefit of the tenancy agreement of this matter naming OL of the applicants as the tenant. The relevant undisputed evidence in this matter is as follows. This tenancy ended pursuant to a Section 49 Notice to End for Landlord's Use on November 30, 2018. The last rent payable under the tenancy agreement was \$1659.00 per month. I have benefit of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice), issued to OL of the applicants, dated September 24, 2018 for the stated purpose pursuant to **Section 49(3)** of the Act in which the landlord or the landlord's close family would occupy the rental unit. The effective date of the Notice was November 30, 2018 and the tenant acted on the Notice.

The landlord testified that they issued the Notice to End in accordance with the instructions of the owners/landlord. The landlord further testified that the owners arrived directly from their overseas country and immediately began occupying the rental unit on December 04, 2018 and subsequently returned to the overseas country June 04, 2019. The landlord testified that during this period the landlord avoided hotels and solely occupied the rental unit.

The tenant's testified to and provided evidence in support of their claim that the landlords placed the rental unit for sale with the Multiple Listing Service (MLS) on January 15, 2019 for \$578,000.00 and subsequently terminated the listing prior to April 07, 2019. The tenant provided evidence of a subsequent advertisement on Craigslist dated April 04, 2019 to rent the unit for \$2000.00 per month. The landlord testified that the rental unit is currently re-rented, according to their information.

In support of their testimony respecting the landlord's re-possession of the rental unit pursuant to the 2 Month Notice to End the landlord provided the following evidence.

- Visitors to Canada travel insurance Confirmation of Coverage document for the owners/landlord with an application for coverage and issue dates of December 12, 2018, a departure date of December 15, 2018, a coverage effective date of December 15, 2018 and an expiry of coverage date of March 15, 2019
- 7 purchase receipts for groceries and sundries/hardware to the date of March 22, 2019
- BC Hydro Electricity utility bill, to the date of January 28, 2019
- Shaw Internet utility bill to February 28, 2019

## **Analysis**

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

I find that **Section 51(2)** of the Act states as follows,

**Tenant's compensation: section 49 notice**

**51 (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 find that in the absence of arrival and departure travel document evidence, the evidence of the landlord reflects that the landlord effectively arrived in Canada December 15, 2018 and made a purchase in Canada no later than March 22, 2019. On the surface of this evidence I find it is wholly inadequate to support the period prescribed by **Section 51(2)(b)** of the Act of 6 months. On the other hand, this is the tenant's application alleging the landlord did not fulfill the requirements set out by **Section 51(2)** of the Act, and the burden of proving their claim rests with them. But moreover, I find that the landlord's testimony (evidence) that they first occupied the rental unit December 04, 2018 does not make sense. Further, the landlord's evidence fails to establish that they occupied the rental unit for at least 6 months beginning after the effective date of the Notice of November 30, 2018. I find that the tenant's evidence is on balance of probabilities the more credible and therefore I prefer their evidence over that of the landlord. Therefore I find it is sufficient to establish entitlement to the remedy prescribed by Section 51(2). I find the landlord may have taken steps toward satisfying Section 51(2)(a), however, it is my finding they failed to satisfy the requirements of Section 51(2)(b) of the Act.

As a result of the above, I find the tenant has established an entitlement under Section 51(2) of the Act in the prescribed amount equivalent of 12 times the monthly rent payable under the tenancy agreement of \$19,908.00 (\$1659.00 x 12 = \$19,908.00). As the tenant was successful in their claim they are entitled to recover their filing fee of \$100.00, for a sum award of **\$20,008.00**.

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$20,008.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The tenant's application is granted in the above terms.

**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: July 16, 2019

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Residential Tenancy Branch