



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT FFT

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary Issue

At the outset of the hearing, the landlord confirmed receiving the tenant's evidence and the tenant confirmed receiving the landlord's evidence.

I note that during the hearing, it appeared the landlord's evidence was not before me; however, the tenant confirmed receiving the landlord's evidence. The landlord read from his evidence and I accepted that what he read was his evidence. After the hearing, when reviewing the submitted evidence prior to making a decision, I located the landlord's evidence and considered it as any other evidence.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee paid for this application?

Background and Evidence

The tenant submitted a written tenancy agreement that shows that the tenancy began on August 1, 2016, for a monthly rent of \$975.00, and a security deposit paid of \$500.00.

The landlord has returned the tenant's security deposit.

The tenant submitted that she received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), from the landlord. The Notice, submitted into evidence, was dated February 19, 2019, and had an effective move-out date of March 31, 2019.

The tenant submitted that she elected to move out early and sent the landlord a 10 day Notice, by registered mail on March 5, 2019, for a move-out date of March 20, 2019. The tenant confirmed she vacated the rental unit on March 20, 2019. The tenant submitted that she did not pay the monthly rent for March 2019, as compensation equivalent to one month's monthly rent for having received the landlord's Two Month Notice.

The tenant's monetary claim is \$325.00, for prorated monthly rent for the 10 days remaining in March 2019, after vacating the rental unit.

The tenant submitted that the landlord refused to accept the registered mail and it was returned to her.

The tenant submitted copies of the Canada Post registered mail information, along with a photo of the envelope containing the mail.

*Landlord's response-*

The landlord denied receiving the tenant's 10 day notice that she was moving out of the rental unit early, as the mail was not placed in his mail box. The landlord submitted further he was informed by Canada Post that the card notifying him of registered mail

was placed in the wrong mail box, in error. The landlord submitted that he checks his mail daily and the only registered mail card he received from the tenant was notification of her forwarding address.

*Tenant's rebuttal-*

In response, the tenant submitted that she has been in frequent contact with Canada Post and was informed that the registered mail was indeed refused.

The tenant submitted a copy of the Canada Post communication messages.

Analysis

Based upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

A Two Month Notice to end the tenancy is not effective earlier than two months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the last rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act.

In this case, I find that the Notice effective date is changed to April 30, 2019.

Under section 51(1) of the Act, a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*], as is the case here, 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.

Section 50 of the Act allows the tenant to end the tenancy earlier than the effective move-out date listed on the Notice, in this case, March 31, 2019, with a 10 day notice to the landlord.

I find the undisputed evidence is that the monthly rent for March 2019, was deemed paid by the tenant, when she chose to withhold the rent payment due on March 1, 2019, which was her right for having received the landlord's Two Month Notice, pursuant to section 51(1.1).

Under section 50(1) of the Act, a tenant may end the tenancy earlier than the effective end of tenancy, with a 10 day notice to the landlord.

Under section 50(2), if rent was paid before the tenant gave a proper 10 day notice, the landlord must refund any rent paid for a period effective date of the tenant's notice.

In the case before me, I find the tenant sent her 10 day notice to the landlord on March 5, 2019, by registered mail, as shown by the copies of the registered mail tracking information and the registered mail envelope, showing the landlord's correct address. The tenant's notice informed the landlord she was vacating the rental unit on March 20, 2019.

Whether there was an error on the part of Canada Post or not, as claimed by the landlord, I find the tenant complied with her obligation under section 88 of the Act by sending the document by registered mail. As such, I find the landlord was constructively served with the tenant's 10 day notice of vacating the rental unit on March 20, 2019.

I therefore find that the tenant is entitled to eleven (11) days' prorated rent, for March 21-March 31, 2019, as she was deemed to have paid for the full month of rent for March 2019. I therefore grant the tenant a monetary award of \$352.55 ( $\$975.00 \text{ monthly rent} \times 12 \text{ months} = \$11,700.00 \text{ yearly rent} \div 365 \text{ days} = \$32.05 \text{ daily rate} \times 11 \text{ days} = \$352.55$ ).

I grant the tenant recovery of his filing fee of \$100.00.

I find the tenant is entitled to a monetary award of \$452.55, comprised of the prorated rent for March 21-31, 2019 for \$352.55, as described above, and recovery of the filing fee of \$100.00, due to her successful application.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$452.55.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is granted, as she is being issued a monetary order for the amount of \$452.55.

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 26, 2019

---

Residential Tenancy Branch