



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 15, 2019, in which the Tenant sought monetary compensation from the Landlord in the amount of \$34,890.00 based on sections 49 and 51 of the *Residential Tenancy Act* as well as recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on August 23, 2019. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlords did not call into this hearing, although I left the teleconference hearing connection open until 2:13 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlords did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on May 17, 2019 by registered mail. He confirmed that he served the Landlord, L.F. at the address noted on the 2 Month Notice to End Tenancy issued on March 29, 2017 and he served the Landlord R.F. at the address noted on the residential tenancy agreement. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlords were duly served as of May 22, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matters

The Tenant confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

#### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlords?
2. Should the Tenant recover the filing fee?

#### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this fixed term tenancy began October 1, 2015. Monthly rent was \$2,600.00 and the Tenants paid a security deposit of \$1,300.00. The Tenant confirmed that the rent was not increased and remained \$2,600.00 until the end of the tenancy.

Introduced in evidence was a copy of the 2 Month Notice to End Tenancy for Landlord's Use issued on March 29, 2017.

The reasons cited on the Notice were as follows:

*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).*

Notably, the Landlord circled the words "family member" and wrote "until Residence sells and Renovation is complete" on the form.

The Tenant moved out of the rental unit on May 19, 2017, exercising his right to end the tenancy early based on section 50 of the *Act*. The Tenant noted that the final inspection did not occur until May 31, 2017.

The Tenant testified that he did not receive a free month's rent as required by section 51(1). The Tenant stated that they paid rent for March and April 2017, but did not pay rent for May 2017 and as such he sought a refund for the 13 days they were not in the rental unit in the amount of \$1,090.00.

The Tenant alleges that the Landlord did not use the rental unit for the stated purpose; rather he alleged that the rental unit was in fact re-rented, not occupied by the Landlord or a close family member. In support the Tenant says that he saw a vehicle parked outside the rental property, which in fact is still parked outside, and which the Tenant submits belongs to a new tenant.

The Tenant also testified that to his knowledge the rental property was listed for sale in May 2018. He further stated that he was informed that realtors were instructed that the rental property was tenanted at the time. The Tenant also noted that the vehicle which was parked outside the rental unit shortly after the tenancy ended is still parked outside the rental unit suggesting the same tenant lives there.

In support of his claim the Tenant called a witness, V.P. She confirmed that she is a close neighbour of the rental unit. She stated that she has observed the same vehicle outside the rental unit since August 29, 2017 which continues to be parked outside the rental unit up to and including the date of the hearing. V.P. further stated that she believes that the rental unit is a single family dwelling and does not have multiple units. V.P. stated that she has never seen the person who drives the vehicle, but she does not believe it is the Landlords' vehicle as she has seen the Landlords before and that was not the vehicle they were driving.

The Tenant also called a witness, D.W. D.W. confirmed that he is a realtor in the community in which the rental unit is located. D.W. testified that to his knowledge the

rental unit was listed for sale on two separate occasions, including May 2018 and again in July 2018. He stated that when the listing expired in January 2019 the property was not re-listed. D.W. stated that the listing information indicated the property was a single family dwelling; he also stated that the instructions to realtors in May of 2018 included the following:

- the rental unit was tenanted;
- the tenant paid \$4,000.00 in rent;
- the tenant wished to continue on with the tenancy following the sale;
- the tenant preferred not to have Saturday showings; and,
- the tenant required 24 hours-notice of any showings.

The Tenant submitted that the rental unit was rented to whoever owned the car which has been at the rental unit since at least late August 2017, within the six month period, and as such the Tenant is entitled to compensation pursuant to section 51(2) as the Landlords did not use the property for the stated purpose.

### Analysis

The Tenant applies for monetary compensation pursuant to sections 49 and 51 of the *Residential Tenancy Act*. At the time the Notice was issued those sections provided as follows:

#### **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;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

#### **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) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

After consideration of the Tenant's undisputed testimony and evidence, the testimony of his witnesses, and on a balance of probabilities, I find as follows.

As clearly noted in section 51(1), a tenant who receives a notice to end tenancy pursuant to section 49 is entitled to compensation equivalent to a free month's rent. Section 50 of the *Act* allows a tenant to end a tenancy early (on 10 days' notice to the Landlord) in which case section 51(1.1) and (1.2) apply. I accept the Tenant's testimony that he did not pay rent for May of 2017; however, as he gave notice pursuant to section 50 and vacated the rental unit on May 17, 2017, he is entitled to the sum of **\$1,090.00** representing monetary compensation for the balance of the month of May.

I will now turn to the Tenant's request for additional compensation pursuant to section 51(2). The Tenant in the case before me requested \$34,890.00 in compensation which included 12 months compensation based on the *current* version of section 51(2).

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018; these changes provide that a tenant is now entitled to *12 months* compensation. However as the Notice was issued prior to May 17, 2018, the Tenant in the case before me is only entitled to compensation based on the former version of section 51(2) which provided for two months.

On balance, I find that the Landlord did not use the rental unit for the purpose stated on the Notice, and I further find that the rental unit was re-rented within six months of the effective date of the Notice.

In reaching this conclusion, I am persuaded by the realtor's testimony that the property was listed for sale in May and July of 2018 and that the detailed instructions to realtors were that the property was tenanted.

I am also persuaded by V.P.'s testimony that she has observed the same vehicle outside the rental unit since August 29, 2017 until the date of the hearing. As the property was listed for sale during this time, I find it likely that the vehicle observed by V.P. was owned by the new tenant of the property.

The effective date of the Notice is May 31, 2017. As I have found the Landlord re-rented the rental unit in August of 2017, I find the Tenant is entitled to the equivalent of

double the monthly rent payable under the tenancy agreement pursuant to section 51(2)(b). As rent was \$2,600.00, the Tenant is entitled to the sum of **\$5,200.00**.

The Tenant has been substantially successful in his application, as such, and pursuant to section 72 of the *Act*, I also grant him recovery of the filing fee.

### Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$6,390.00** calculated as follows:

Compensation pursuant to section 51(1)	\$1,090.00
Compensation pursuant to section 51(2)	\$5,200.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$6,390.00</b>

In furtherance of the above I grant the Tenant a Monetary Order in the amount of **\$6,390.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: September 11, 2019

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Residential Tenancy Branch