



# Dispute Resolution Services

Page: 1

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 June 7, 2019, wherein she sought monetary compensation from the Landlord and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on September 16, 2019. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:59 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, her witness, and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on June 7, 2019 by registered mail. She also provided a copy of the registered mail receipt in evidence. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 Landlord was duly served as of June 12, 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 her email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

### Issues to be Decided

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

### Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed that this tenancy began October 1, 2003. The Tenant paid \$1,250.00 in rent for the rental unit. She rented the upstairs and downstairs. The Tenant lived upstairs and operated a day care out of the basement unit.

On June 9, 2017 the Tenant received the 2 Month Notice to End Tenancy for Landlord's Use. The reasons cited on the Notice were as follows:

|   |
|---|
| <input checked="" type="checkbox"/> The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. |
|---|

The Tenant confirmed that she moved out of the rental unit July 31, 2017. She also stated that she was forced to shut down her day care business when the tenancy ended.

The Tenant submitted that the rental unit was not renovated but was re-rented by the Landlord at a higher price. She stated that approximately five months after she moved out she went to the rental unit to retrieve mail, and at that time she was informed by the new renters that they were not related to the Landlord, were renting and paying \$1,300.00 for the upstairs and that the downstairs renters were paying \$800.00 for the downstairs.

The Tenant further testified that as she lived in the rental unit for 14 years she knew many people in the neighbourhood such that she was informed by them about the new renters. Additionally, as she is often in the neighbourhood visiting friends, she personally observed that the Landlord did not renovate or repair the rental unit, but rather re-rented it to others.

The tenant also called a witness, T.F. The witness testified that she has lived next to the rental unit since June of 2014 and continues to live there to this date. The witness stated that she was friends with the Tenant, and as such had been in the rental unit prior to the tenancy ended. She further testified that she has been in the rental unit numerous times since the tenancy ended and can confirm that it was not renovated. She stated that "nothing has changed" and no renovations were done. She confirmed that after the Tenant moved out (who was occupying both the upstairs and downstairs) both units were rented out to separate families of five. She stated that both those families left, and the units are now rented to other families. In all cases she confirmed that the property has been rented out continuously since the tenancy ended.

### Analysis

The Tenant applies for monetary compensation pursuant to sections 49 and 51 of the *Residential Tenancy Act*. Section 49 allows a Landlord to end a tenancy for their own use and section 51 provides for compensation that is payable to a tenant in the event the landlord issues a notice pursuant to section 49.

The *current* version of section 51(2) provides that a Tenant is entitled to monetary compensation equivalent to *12 months' rent* should the Landlord not use the property for the purpose stated on the Notice. Additionally, the current version of the *Residential*

*Tenancy Act* provides that notices issued to facilitate renovations and extensive repairs now require four months' notice.

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. In this case the Notice was issued on June 9, 2017, nearly a year prior to May 17, 2018; as such, 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. For clarity I reproduce the former versions of section 59 and 51 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 her witness, and on a balance of probabilities, I find as follows.

I find that the Landlord did not use the rental unit for the purpose stated on the Notice, and that they did not complete extensive repairs and renovations which required vacant possession and necessitated an end to this tenancy. Rather, I 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 witness' testimony that she has lived in the neighbourhood for a number of years and has been in the rental unit both during the subject tenancy and since it has ended. I accept her testimony that she has met the

new renters, and that the Landlord is now renting both the upstairs and downstairs as separate units. I also accept her testimony that the Landlord has not completed any repairs or renovations since the tenancy ended and that it has been rented continuously since the Tenant moved out.

I am also persuaded by the Tenant's testimony that approximately five months after she moved out she went to the rental unit to retrieve mail, and at that time she was informed by the new renters that they were not related to the Landlord, were renting and paying \$1,300.00 for the upstairs and that the downstairs renters were paying \$800.00 for the downstairs. I also accept her testimony that she is often in the neighbourhood and has observed that the Landlord did not renovate or repair the rental unit.

Consequently, 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 \$1,250.00, the Tenant is entitled to the sum of **\$2,500.00**.

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.

The Tenant also sought compensation for the cost of moving from the rental unit, including the cost of renting a truck, hiring movers and paying for fuel. As explained during the hearing, the Tenant's entitlement to double the monthly rent pursuant to section 51(2) is to include such costs as moving, such that the Tenant is not entitled to recover those in addition to the two months' rent.

### Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$2,600.00** calculated as follows:

|  |                   |
|--|-------------------|
| Compensation pursuant to section 51(2) | \$2,500.00        |
| Filing fee                             | \$100.00          |
| <b>TOTAL AWARDED</b>                   | <b>\$2,600.00</b> |

In furtherance of the above I grant the Tenant a Monetary Order in the amount of **\$\$2,600.00**. This Order must be served on the Landlord 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 17, 2019

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Residential Tenancy Branch