



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via email at the tenants' request on September 12, 2019. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

At the outset, the tenants' monetary claim was clarified. The tenants seek a monetary order for \$31,200.00 (equal to 12 months of rent @ \$2,600.00 per month) under section 51 of the Act. Extensive discussions took place in which both parties were advised that as this tenancy took place between December 2014 and ended on March 2017 that the current legislation does not apply. As such, section 51 was amended on May 17, 2018 and as a result the legislation under section 51 at the time of this tenancy only allows for compensation to an amount that is the equivalent of double the monthly rent payable under the tenancy agreement ( $\$2,600.00 \times 2 = \$5,200.00$ ). Both parties were advised that the hearing shall proceed under the legislation prior to May 17, 2018. Both parties

were also advised that I would include the tenants' request for recovery of the \$100.00 filing fee. The upper limit for the tenants' monetary application is \$5,300.00.

The landlord also argues that in previous dispute resolution hearing dated September 7, 2016 a settlement agreement was made. In that agreement (Decision noted on the cover of this Decision) it states in part,

Analysis

*Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.*

*The parties reached an agreement to settle their dispute under the following final and binding terms:*

- 1. The tenants and landlord agree **that this tenancy will end** no later than **12:00 p.m. on March 1, 2017**, and, the landlord will be granted an **Order of Possession** effective this date.*
- 2. Pursuant to section 51 of the Act, the tenants are entitled to receive from the landlord on or before March 1, 2017, an amount that is equivalent of one month's rent payable under the tenancy agreement.*
- 3. The landlord agrees to provide the tenants with a favorable letter of reference.*
- 4. The tenant agrees to act reasonably in providing the landlord access to the rental unit for the performance of minor renovations and repairs.*
- 5. The tenants may end the tenancy before March 1, 2017 by providing the landlord at least 10 day's written notice to end the tenancy.*

*Each party confirmed that they understood the terms of the agreement. The parties agreed that these particulars comprise the **full and final settlement** of all aspects of the above applications.*

***This Decision and Settlement Agreement is final and binding on both parties.***

Conclusion

*I grant an Order of Possession to the landlord effective **12:00 p.m. on March 1, 2017**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.*

The landlord argues that this is a settlement agreement in which each party confirmed the terms of the agreement and that these particulars comprise the full and final settlement of all aspects of the above applications. The landlord refers to the original applications for dispute filed by each party which states in part,

Introduction

*This hearing was convened in response to cross-applications by the parties pursuant to the Residential Tenancy Act for Orders as follows:*

*Landlord:*

- ***an order of possession for landlord's use of property pursuant to section 55;***
- *authorization to recover the filing fee for this application from the tenant pursuant to section 72.*

*Tenant:*

- ***cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;***
- *a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;*
- *an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;*
- *an order to the landlord to provide services or facilities required by law pursuant to section 65;*
- *authorization to recover the filing fee for this application from the landlord pursuant to section 72.*
- *an "other" unspecified remedy.*

The tenants in return refer to term 2 of the settlement agreement which states in part,

2. *Pursuant to section 51 of the Act, the tenants are entitled to receive from the landlord on or before March 1, 2017, an amount that is equivalent of one month's rent payable under the tenancy agreement.*

The tenants argue that this term specifically mentions that section 51 of the Act applies in regards to compensation in complying with an end to the tenancy on or before March 1, 2017 an amount equal to one month's rent.

I also note that term 5 states,

5. *The tenants may end the tenancy before March 1, 2017 by providing the landlord at least 10 day's written notice to end the tenancy.*

I find that this additional term in the settlement agreement specifies that the tenants may give notice with 10 days' written notice and move out early as per a notice issued under section 49 of the Act.

I find that although the landlord has pointed out that this is a final and binding settlement agreement regarding the original applications filed by both parties, the specific final term #2 and #5 refer to section 51 of the Act regarding compensation in complying with a notice received under section 49. As such, I find the settlement agreement was specific to the terms in ending the tenancy on March 1, 2017 and does not contemplate compensation under section 51 for the future. The specific terms of the settlement agreement do not mention the cancellation of the 2 month notice served. In this regard I find that the tenants are entitled to seek compensation under section 51 of the Act as of the legislation prior to May 17, 2018. The hearing shall on this basis.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2014 on a fixed term tenancy ending on November 30, 2015 then thereafter on a month-to-month basis as per the submitted copy of the

signed tenancy agreement. The monthly rent was \$2,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,300.00 was paid on November 5, 2012.

Both parties agreed that the tenancy ended as a result of a settlement agreement dated September 7, 2016 to end the tenancy on March 1, 2017. This was as a result of the landlord and the tenants filing for dispute(s) in a hearing scheduled for September 7, 2016 after the landlord served the tenants with a 2 Month Notice to End Tenancy issued for Landlord's Use of Property.

The tenants now seek a monetary claim of \$5,300.00 equal to double the monthly rent (@\$2,600.00 per month) and recovery of the \$100.00 filing fee as the landlord "has failed to use the property pursuant to section 49" of the Act. The tenants argue that rather than moving in the landlord undertook significant renovations on the property resulting in a stop work order being issued by the local authority.

The landlord has provided an extensive chronology of events that took place after the 2 month notice was served. The landlord detailed the scope of work for renovations, timelines, end results and the circumstances of the landlord during the renovations and currently.

### Analysis

Section 51 of the Act (prior to May 17, 2018) states in part,

A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord...the equivalent of one month's rent payable under the tenancy agreement...(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 month beginning within a reasonable period after the effective date of the notice,*

*the landlord...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

In this case, it is clear based upon the legislation that the landlord did not use the rental unit for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, despite the landlord's extended renovation period despite the landlord's circumstances after an 18 month period. The tenants' application is granted for a monetary order of \$5,300.00.

### Conclusion

The tenants are granted a monetary order for \$5,300.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: October 02, 2019

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Residential Tenancy Branch