



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIBRO HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlord confirmed that they received a copy of the tenant's amended dispute resolution hearing package sent by registered mail on or about July 31, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or other money owed arising out of this tenancy? Should any other orders be issued with respect to this tenancy?

### Background and Evidence

This tenancy began in July 2103, before the current landlord purchased the property in 2017. Monthly rent by the end of this tenancy was set at \$565.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$262.50 security deposit paid when this tenancy began. The parties agreed that the tenant has not provided their forwarding address in writing to the landlord.

The tenant identified a number of different monetary amounts sought in their application for dispute resolution. Originally, the tenant identified \$1.00. Their first amendment was

for a monetary award of \$6,792.00; their final amendment was for a monetary award of \$6,528.00. The tenant asked for these amounts because they maintained the landlord had not complied with the requirement to offer the tenant the first right of refusal to live in the rental unit once the extensive renovations that the landlord was undertaking had been finished.

Although the landlord issued a notice to end tenancy on a 2 Month Notice to End Tenancy for Landlord's Use of Property instead of the required 4 Month Notice that was then required, the parties entered into a settlement agreement on September 20, 2018, reported in the presiding Arbitrator's decision that day (see above for file number). In that decision, the parties made the following agreement:

- a. The parties mutually agree to end the tenancy on February 28, 2019.*
- b. The parties request that the arbitrator issue an Order of Possession for February 28, 2019.*
- c. The parties acknowledged that the landlord used a 2 month Notice to End Tenancy at a time when a 4 month Notice to End Tenancy should have been used. The parties agree that the tenant has all of the rights he would have been entitled to had a 4 month Notice to End Tenancy been used.*
- d. The parties agree that as the Tenant was served with a Notice to End Tenancy for landlord use the Tenant is entitled to end the tenancy early under section 50 of the Act and the equivalent of one month rent free and the right to end the tenancy early under section 51 of the Act.*

To give legal effect to that settlement, the presiding Arbitrator ordered that the tenant had all of the rights he would have been entitled to had a 4 Month Notice to End Tenancy been used.

At the current hearing, the parties agreed that the tenant did not provide the landlord with an address where the tenant could be contacted before the end of this tenancy. The tenant and their assistant confirmed that the tenant did not make any request in writing to the landlord that they wanted to be given first right of refusal to rent the renovated premises and did not give the landlord their forwarding address where they could be contacted. The tenant did not use the prescribed forms to provide such notice to the landlord.

The landlord gave undisputed sworn testimony, as was evidenced in the September 20, 2018 decision, that the tenant indicated that they had no interest in living in the rental unit beyond February 28, 2019. The landlord said that until they received a call from the

tenant in early April 2019, they had no way of contacting the tenant or communicating with the tenant because the tenant's existing land line had been disconnected. The landlord gave undisputed sworn testimony that they placed approximately 15 phone calls and/or text messages to the tenant trying to see if the tenant was interested in renting the premises following the tenant's initial call to the landlord in early April 2019. The landlord said that the tenant did not respond to any of these messages, and that the landlord only learned of the tenant's continuing interest in this matter when they received the tenant's application for dispute resolution in early August 2019. By April 9, 2019, the landlord had rented out the premises to another tenant following completion of the renovations to the tenant's former rental unit.

### Analysis

Section 51.2 and 51.3 of the *Act* establishes the right of first refusal following the issuance of a 4 Month Notice to End Tenancy for Landlord's Use of Property. This section reads in part as follows:

#### ***Right of first refusal***

**51.2** (1)*In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.*

*(2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant*

- (a) a notice of the availability date of the rental unit, and*
- (b) a tenancy agreement to commence effective on that availability date...*

*(4) A notice under subsection (1) or (2) must be in the approved form.*

#### ***Tenant's compensation: no right of first refusal***

**51.3** (1)*Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent*

*payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2).*

*(2)The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from complying with section 51.2 (2)...*

Based on a balance of probabilities, I find that the tenant did not complete the required notice advising the landlord that they were seeking a right of first refusal to this rental suite once the landlord's renovations were completed. The landlord also had no way of communicating with the tenant during the time frame that was relevant, as the only contact that the tenant had with the landlord was by way of a phone call, which the tenant did not respond to when the landlord tried to reconnect with the tenant. I dismiss the tenants' application without leave to reapply.

Pursuant to section 63 of the *Act*, the 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 issues surrounding the security deposit, and the alleged expenses that the landlord claimed to have incurred to remove material left behind by the tenant at the end of this tenancy. Since the parties were able to turn their minds to a compromise on claims that would otherwise have required them incurring additional costs in filing applications for dispute resolution, both parties agreed to the following final and binding resolution of the remaining issues in dispute with respect to this tenancy:

1. The landlord agreed to send the tenant a cheque for \$131.25 by November 25, 2019, which is to constitute the return of the tenant's security deposit.
2. The tenant agreed to allow the landlord to retain the remaining \$131.25 portion of the tenant's security deposit as compensation for the costs the landlord incurred in removing items left behind by the tenant at the end of this tenancy.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of the security deposit for this tenancy and all remaining issues in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

## Conclusion

I dismiss the tenants' application for a monetary award for losses arising out of this tenancy without leave to reapply.

To give effect to the settlement reached between the parties about the return of the tenants' security deposit, I order the landlord to send the tenant a cheque for \$131.25 by November 25, 2019. I order the landlord to retain the remaining \$131.25 portion of the security deposit as compensation for the cost incurred by the landlord in removing items left behind at the end of this tenancy by the tenant.

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: November 18, 2019

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Residential Tenancy Branch