



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 17, 2019 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing and was accompanied by I.M., an advocate. The Landlord was represented at the hearing by D.M., an agent. The owner of the rental property, P.L., and her advocate, J.R., also attended the hearing. The Tenant, D.M., P.L., and J.R. provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail. The parties agreed that these documents were received by the Landlord on October 21, 2019. I find these documents were received by the Landlord on that date.

The Landlord submitted documentary evidence in response to the Application. D.M. confirmed these documents were served on the Tenant by registered mail on January 23, 2020. A Canada Post customer receipt was submitted in support. Pursuant to section 88 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. Therefore, I find these documents are deemed to have been received on January 28, 2020.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on March 16, 2016. The parties agreed the Tenant moved out on or about February 15, 2019 after receiving a Two Month Notice to End Tenancy dated January 24, 2019 (the "Two Month Notice"). During the tenancy, rent in the amount of \$1,200.00 per month was due on the first day of each month. The Tenant also paid an additional \$150.00 towards utilities. There are no outstanding issues in relation to the security deposit.

The monetary relief sought by the Tenant was set out in a Monetary Order Worksheet dated October 16, 2019. The Tenant claims \$16,200.00 in compensation under section 51(2) of the *Act*. Specifically, the Tenant testified that the owner's son, A.P., did not move into the rental unit as she was advised. Rather, the Tenant testified that after she moved out, she saw a Craigslist advertisement posted on May 28, 2019. The advertisement offered the unit for rent for \$1,800.00 per month. The Tenant testified that her mother and daughter went to view the rental unit on June 24, 2019 and were given a rental application within hours of the viewing. The Tenant testified that on September 5, 2019, the Landlord's agent confirmed "this property has been rented out." Submitted in support of the Tenant's testimony were copies of the Two Month Notice, a Craigslist advertisement, and email correspondence confirming the unit was available for rent and had been re-rented.

In reply, D.M. acknowledged that the facts as presented by the Tenant were essentially correct. That is, the owner's son and his fiancé did not move into the rental unit as intended. However, he stated it was not the owner's intention to wrongfully evict the Tenant. Rather, D.M. testified that while the owner's son and fiancé were making improvements to the rental unit, a dog in the adjacent rental unit was barking. D.M. testified that the barking has given rise to dispute resolution proceedings related to a loss of quiet enjoyment to other tenants. This was presented as a justification for the owner's son to change his mind about living in the rental unit. In specific response, I.M. advised that the Tenant had also made complaints, so the Landlord was aware of noise issues caused by the dog.

Further, F.L. testified that although her son intended to perform some work in the rental unit before moving in, delays were caused by his busy job as a plumber. F.L. also testified that her son and his fiancé did not want to move in because noise from a dog in the rental property. She acknowledged the unit was re-rented effective July 1, 2019.

In addition, the Landlord submitted a letter prepared by the owner's son, A.P. In it, he advises that he and his fiancé intended to move into the rental unit after some upgrades were completed. He indicated that the move-in dates "kept pushing further and further out" due to time constraints. In the letter, A.P. also stated that noise disturbances from a barking dog "was going to cause trouble for us moving in" and that A.P. and his fiancé decided not to take the rental unit, which was "put back on the market."

Finally, the Landlord submitted that the amount claimed as compensation should be reduced to \$14,400.00 as utilities were not included in rent.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 51(3) of the *Act* provides for compensation for tenants who vacate a rental unit in accordance with a notice to end tenancy issued under section 49 of the *Act*, and the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. Section 51(3) of the *Act* empowers the director to excuse a landlord from the obligation to pay compensation if there are "extenuating circumstances" that prevented the landlord from doing so.

In this case, I find that the Tenant vacated the rental unit on February 15, 2019 after receipt of the Two Month Notice. Further, I find the Landlord did not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice or use the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. Specifically, I find the owner's son made some improvements to the rental unit but that he and his fiancé decided not to move in. As a result, I find the upgraded rental unit was advertised for rent at a significantly higher monthly rate less than four months

after the Tenant vacated the rental unit. In addition, I find that a new tenancy agreement was in effect less than five months after the Tenant vacated the rental unit.

With respect to the Landlord's assertion that there were extenuating circumstances, I do not accept that the issue with the noisy dog amounts to extenuating circumstances under the *Act*. I accept the submission of I.M. who advised that the owner was aware of the noise issue before the Tenant vacated the rental unit. I find it is more likely than not that steps could have been taken to address the noise issue before the end of the tenancy, or while improvements were being made to the rental unit by the owner's son. Accordingly, I find there is insufficient evidence to satisfy me that there were extenuating circumstances that would excuse the Landlord from an obligation to pay compensation.

Considering the above, I find the Tenant is entitled to recover compensation pursuant to section 51(2) of the *Act* in the amount of \$14,400.00, with represents 12 times the monthly rent payable (12 months x \$1,200.00). Therefore, pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$14,400.00.

### Conclusion

The Tenant is granted a monetary order in the amount of \$14,400.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: February 24, 2020

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Residential Tenancy Branch