



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, MNDCT, MNSD, FFL

### **Introduction**

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that in November of 2019 the Landlord's Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which she applied for money owed or compensation for damage or loss and for the return of her security deposit.

The Tenant stated that on December 17, 2019 the Tenant's Dispute Resolution Package was sent to the Landlords, via registered mail. The Landlord acknowledged receipt of these documents.

The Tenant filed an Amendment to an Application for Dispute Resolution, in which she increased the amount of her monetary claim to \$24,400.00. She stated that this Amendment was served to the Landlords, by email, sometime in April of 2020. The Director has authorized service of documents, via email, during the COVID-19 pandemic. The Landlord stated that the Amendment was received in March of 2020.

In March of 2020 the Landlords submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was emailed to the Tenant in March of 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In April of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was emailed to the Landlords on April 19, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or compensation for unpaid rent?

Is the Tenant entitled to compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use?

Is the Tenant entitled to compensation because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Residential Tenancy Act* (Act) within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Is the Landlord entitled to keep all or part of the security deposit, or should it be returned to the Tenant?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 15, 2019;
- the parties signed a tenancy agreement which declares that monthly rent is \$1,200.00;
- there is an addendum to the tenancy agreement, which was submitted in evidence;
- rent was due by the 15<sup>th</sup> day of each month;
- the Tenant paid a security deposit of \$600.00;
- the Tenant paid a pet damage deposit of \$600.00;

- the \$600.00 pet damage deposit was returned to the Tenant prior to the end of the tenancy;
- on September 24, 2019 the female Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by December 14, 2019;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the rental unit would be occupied by the Landlord, the Landlord's spouse, or a close family member of the Landlord or the Landlord's spouse;
- on November 07, 2019 or November 08, 2019, the Tenant served the Landlord with a Ten Day Notice to End Tenancy, which declared that she will be vacating the rental unit on November 18, 2019;
- rent was paid for the period between September 15, 2019 and November 14, 2019;
- the rental unit was vacated on November 18, 2019;
- no rent was paid for the period between November 15, 2019 and November 18, 2019; and
- the Tenant provided the Landlord with a forwarding address, in writing, on November 18, 2019.

The addendum to the tenancy agreement declares, in part, that:

- the Tenant will work for the female Landlord as a personal assistant for 60 hours each month;
- there will be no receipt for this work as it is on a "volunteer basis";
- the work is in exchange for "reduced monthly rent"; and
- if the Tenant decides "not to provide these hours", full payment of rent will need to be paid for that month, which is \$1900 per month".

The Tenant stated that she contacted the Labour Relations Board and was told that the addendum could not be enforced by the Labour Relations Board. The Tenant submits that the Landlord is withholding her security deposit, in part, to recover money the Landlord believed is owed to her as a result of their work agreement, which the Landlord contends has nothing to do with the security deposit. The Tenant submits that the Landlord is not entitled to collect additional rent regardless of the number of hours the Tenant worked, as the work agreement is "null and void".

The Landlord submits that the addendum is a part of the tenancy agreement and that the Tenant was obligated to pay the monthly rent of \$1,900.00 whenever she did not work 60 hours in any given month.

The Landlord is claiming \$1,305.00 for unpaid rent. This is based on the Landlord's calculation that the Tenant only worked 87 hours during this tenancy and that she should have worked for 135 hours to qualify for the reduced rent of \$1,200.00 per month.

The Landlord is seeking compensation for rent for the period between November 15, 2019 and November 18, 2019, as no rent was paid for those days and the Tenant occupied the rental unit for those days. The Landlord has claimed daily rent of \$63.33 for those 4 days, which is based on her belief that rent for the period between September 15, 2019 and November 14, 2019 was \$1,900.00. The Tenant does not dispute that rent was due for those 4 days, however she submits that it should be based on the monthly rent of \$1,200.00.

The Tenant submits that she is entitled to one free month's rent because she was served with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 51(1) of the *Act*.

The Tenant submits that she is entitled to the equivalent of 12 times the monthly rent payable under the tenancy agreement, pursuant to section 51(2)(b) of the *Act*, because the rental unit was not used for the purpose for ending the tenancy cited on the Two Month Notice to End Tenancy for Landlord's Use for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Landlord stated that:

- the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant because she and the other Landlord, who is her husband, were in the process of divorcing;
- when the Two Month Notice to End Tenancy for Landlord's Use was served the male Landlord intended to move into the rental unit;
- the male Landlord moved into the rental unit on November 23, 2019;
- the rental unit was advertised for sale in early March of 2020;
- an agreement to sell the rental unit was reached on March 12, 2020;
- the new owners took possession of the rental unit on April 10, 2020;
- the male Landlord moved out of the rental unit on April 05, 2020; and
- there was no court order or other legal reason compelling the sale of the rental unit.

When the Landlord was asked if there were extenuating circumstances that led to the sale of the rental unit, she stated that:

- the divorce proceedings led to the male Landlord moving into the rental unit;
- there was no court Order requiring the Landlords to sell the rental unit; and
- the male Landlord would likely still be living in the rental unit if it had not sold.

The Landlord is seeking compensation, in the amount of \$50.00, for repairing damage to the wall, which is depicted in a photograph submitted by the Landlords. The Tenant agrees that the damage in the photograph occurred during the tenancy, however she contends the damage should be considered normal wear and tear.

The Landlord stated that they initially planned to repair the damage themselves. The Landlords estimated the repair would cost \$25.00 for time spent repairing the damage and \$25.00 in supplies. The Landlord stated that the damage was never repaired by the Landlords and that they agreed to reduce the purchase price of the rental unit by \$250.00, to compensate the new owners for the cost of repairing the damaged wall. The Landlords submitted an addendum to the purchase and sale contract which declares the purchase price of the rental unit was reduced by \$250.00, although it does not declare why the price was reduced.

### Analysis

On the basis of the undisputed evidence, I find that the parties have a written tenancy agreement that requires the Tenant to pay monthly rent of \$1200.00 by the 15<sup>th</sup> day of each month.

I have authority to determine disputes between landlords and tenants. As the parties entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,200.00, I am satisfied that I have the authority to determine disputes relating to that agreement.

I do not have authority to disputes between a landlord and a tenant that is not directly related to a tenancy. Specifically, I do not have authority to determine whether or not a party has fulfilled an employment contract, even if a tenant is not required to pay rent in compensation for labour. I find that is an employment contract which is not governed by the *Act* and that I, therefore, do not have jurisdiction over any dispute arising from the employment contract.

I find that the addendum to the tenancy agreement, which declares that the Tenant must pay monthly rent of \$1,900.00 if she does not work for the Landlord for 60 hours in any given month, constitutes an employment contract over which I have no jurisdiction.

As I do not have jurisdiction over that employment contract, I find that I do not have the authority to conclude that rent was \$1,900.00 for any month of this tenancy. I therefore find that monthly rent was \$1,200.00, as per page two of the tenancy agreement, regardless of whether the Tenant worked for the Landlord in any given month.

Even if I am incorrect in concluding I do not have jurisdiction over the employment arrangement outlined in the addendum, I would not enforce the terms of the addendum. I would not enforce the terms of the addendum because the addendum is, in my view unconscionable. Section 6(1)(b) of the *Act* stipulates a term in a tenancy agreement is not enforceable if the term is unconscionable.

A term in an agreement is typically considered unconscionable if it extremely unjust or overwhelmingly one-sided in favor of the party who drafted the term. I find that the addendum is unconscionable as it is highly unfair to the Tenant. The addendum establishes that the Tenant will receive a monthly rent reduction of \$700.00 if she works for the Landlord for 60 hours in any given month but that she will receive no rent reduction if she only works for the Landlord for 59 hours in any given month. I find that is highly unfair to the Tenant and, as such, I would decline to enforce the addendum if I had jurisdiction over the work arrangement.

As I have concluded that rent remained at \$1,200.00 per month, regardless of whether the Tenant worked for the Landlord in any given month, I find that the Landlord has failed to establish that any additional rent was due for the period between August 15, 2019 and November 14, 2019.

On the basis of the undisputed evidence, I find that on September 24, 2019 the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*, which declared that she must vacate the rental unit by December 14, 2019.

On the basis of the undisputed evidence, I find that on November 07, 2019 or November 08, 2019 the Tenant served the Landlord with written notice that she would be vacating the rental unit on November 18, 2019. I find that the Tenant had the right to end this tenancy on November 18, 2019, pursuant to section 50(1)(a) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not pay any rent for the four days she occupied the rental unit between November 15, 2019 and November 18, 2019. I therefore find that she must pay the Landlord rent for those 4 days, at a daily rate of \$40.00, which equals \$160.00.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* 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. As the Tenant received a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*, she is entitled to compensation in the amount of \$1,200.00, which is the equivalent of one month's rent.

I find that the Tenant is entitled to compensation under section 51 of the *Act*, regardless of the fact that she vacated the rental unit early, as authorized by section 50(3) of the *Act*.

Section 51(2)(b) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit was 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 must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence, I find that the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant because the male Landlord intended to move into the rental unit. On the basis of the undisputed evidence, I find that the male Landlord moved into the rental unit on November 23, 2019; that he moved out of the rental unit on April 05, 2020, and that new owners took possession of the rental unit on April 10, 2020. As the Landlords took legal possession of the rental unit from the Tenant sometime on November 18, 2019 and the new owner took legal possession of the rental unit sometime on the day of April 10, 2020, I find that the rental unit was occupied by the Landlords for approximately five months, even if the male Landlord did not live in the rental unit for that entire period.

As the Landlords did not occupy the rental unit for at least six months, I find that the Landlords must pay the Tenant \$14,400.00, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Section 51(3)(b) of the *Act* authorizes me to excuse a landlord from paying the tenant the amount required under subsection (2) if there are extenuating circumstances that prevented the landlord from using 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. Although I accept that the male Landlord moved into the rental unit as a result of a divorce, I find that the divorce did not prevent him from remaining in the rental unit for at least six months. No evidence was submitted to establish that there were extenuating circumstances, such as a court Order requiring that the property be sold, that required the Landlords to sell the unit prior to the male Landlord living in it for six months. As the Landlords have failed to establish extenuating circumstances led to the sale of the rental unit, I cannot excuse the Landlord from paying the amount due under section 51(2)(b) of the *Act*.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the photograph submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the wall that was damaged during the tenancy. I find that the damage to the wall is significant and does not constitute normal wear and tear.

On the basis of the undisputed testimony of the Landlord, I find that the purchase price of this rental unit was reduced by \$250.00 as a result of the damaged wall. I therefore find that the Landlords have established that they suffered a financial loss because the damaged wall was not repaired. I therefore find that the Landlords are entitled to the full amount of their claim for \$50.00.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing their Application for Dispute Resolution.

The Tenant did not apply to recover the fee for filing her Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$310.00, which includes \$160.00 in unpaid rent, \$50.00 for a damaged wall, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I authorize



the Landlord, pursuant to section 72(2) of the *Act*, to withhold \$310.00 from the Tenant's security deposit in full satisfaction of this monetary claim. The remaining \$290.00 of the security deposit must be returned to the Tenant.

The Tenant has established a monetary claim, in the amount of \$15,890.00, which includes \$1,200.00 pursuant to section 51(1) of the *Act*, \$14,400.00 pursuant to section 51(2)(b) of the *Act*, and a partial refund of the security deposit, in the amount of \$290.00.

Based on these determinations I grant the Tenant a monetary Order for \$15,890.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 01, 2020

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Residential Tenancy Branch