



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFL

### Introduction

This hearing was convened in response to the tenant's application for compensation for monetary loss or other money owed pursuant to sections 7 and 51 of the Residential Tenancy Act (Act). The tenant has also applied to recover his fee for filing this application from the landlord pursuant to section 72.

The applicant and respondent called into the teleconference and each affirmed they would provide truthful testimony. The landlord stated that they had the opportunity to review the tenant's application and evidence and were ready to proceed; the tenant confirmed he had received and reviewed the landlord's evidence and is prepared to proceed.

### Preliminary Matter

Landlord's counsel noted the landlord named in the tenancy agreement was not named in the tenant's application. The tenant stated he named who he believed was the owner of the rental unit; both parties agreed to add the landlord named in the tenancy agreement. Pursuant to section 64 of the Act, I have amended the application.

### Issues to be Decided

- Is the tenant entitled to the equivalent of 12 times the monthly rent pursuant to section 51(2) of the Act?
- Is the tenant entitled to be compensated pursuant to section 7(1) of the Act for cleaning the rental property?
- Is the tenant entitled to be compensated pursuant to section 7(1) for loss of income to attend the hearing today?
- Is the tenant entitled to recover the fee for filing this application from the landlord pursuant to section 72(1) of the Act?

## Background and Evidence

The parties both provided a copy of the tenancy agreement and agreed the tenancy began on May 1, 2016 as a fixed term tenancy. It became a periodic tenancy after six months. The tenancy agreement records \$2,100.00 in monthly rent due on the 1<sup>st</sup> of the month; rent was reduced to \$1,600.00 per month in October 2018. The tenant vacated the rental unit in mid-October 2019 and the landlord did not require rent to be paid for September or October 2019, thus the last month for which the tenant paid rent was August 2019. The tenant received the return of his \$1,050.00 security deposit from the landlord.

The tenant's application states he is owed \$25,200.00 for:

rent owed, court costs and cleaning costs to keep the landlords from being ticketed by the city. i spent thousands to clean and repair the property and was kicked out under the premise they were assuming residency. one month later and it has been torn down

The tenant testified he should be compensated \$3,000.00 for the cost of disposal bins he rented to remove debris from the rental property in response to municipal warnings in October 2016, May 2017 and August 2018. He claimed the debris was from prior tenants and construction he undertook to ensure the rental unit was habitable and the rental property maintained to meet municipal standards. The tenant did not provide any documentary evidence of the costs he incurred. The landlord stated there was no agreement for landlord to reimburse the tenant for anything and requested this \$3,000.00 claim be dismissed for lack of evidence.

The tenant testified his court costs are the \$100.00 filing fee for this application and one day of lost income, \$250.00, to participate in the hearing today. The tenant stated he is employed as a journeyman roofer.

The tenant testified he should be compensated 12 months' rent because the landlord's parents did not move into the rental unit, which was the reason the tenancy was ended. The value of 12 months rent at \$1,600.00 per month is \$19,200.00.

On August 24, 2019 the landlord texted the tenant to notify him the landlord's parents wanted to move into the rental unit. The text states "Hey [redacted], my parents and I have been talking for the past few weeks and my dad wants to move into [rental unit] and downsize from his current home." On August 25, 2019 the landlords gave a letter to the tenant stating in part:

This is a formal letter of tenancy termination for [rental unit address]. We will be occupying the home as a primary residence effective November 1, 2019. This letter serves as the required notice to terminate the tenancy as per the British Columbia Tenancy act.

The tenant testified he complied with the letter and signed the letter to indicate he accepted it. The tenant also replied to the August 25, 2019 letter with his own letter dated August 29, 2019 confirming he would vacate the rental unit.

The tenant testified he returned to the rental unit in December 2019 to check for mail and discovered the landlord's parents were not moving in because the rental unit was being demolished. After reviewing the landlord's evidence, the tenant testified he believes the landlord's parents did not ever intend to move into the rental unit, the plan was always for demolition and the landlord used him to keep the rental unit occupied while planning the demolition.

The landlord confirmed the tenancy was ended pursuant to section 49(3) of the Act because the landlord's parents intend to occupy the rental property. The landlord submitted that the rental unit could not be inhabited by the landlord's parents after the tenant vacated because the rental unit was very old and the landlord could not get property insurance. The landlord's intent in ending the tenancy has always been for his parents to occupy the rental property and this cannot occur until a new dwelling is constructed. The new dwelling for the landlord's parents is currently under construction.

The landlord provided documentary evidence of their intent as early as August 2018 to demolish the rental unit and build a new dwelling on the rental property. The permit applications for demolition and construction of a new dwelling were made in December 2018 and issued approximately one year later in late 2019.

The landlord also submitted that although the tenancy was ended for the purpose of the landlord's parents occupying the rental property, the landlord also met all the requirements to end the tenancy to demolish the rental unit pursuant to Residential Tenancy Branch policy guideline 2b "Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use" and provided a copy of this guideline in evidence.

### Analysis

The sections of the Act referred to below can be found [here](#).

- \$3,000.00 claim for cleaning costs – disposal bins

Section 7(1) of the Act enables a tenant to be compensated by the landlord if the landlord does not comply with the Act, the regulations or the tenancy agreement.

The onus is on the tenant to demonstrate on a balance of probabilities that the landlord has not complied with the Act, the regulations or the tenancy agreement. The tenant has failed to substantiate that he suffered a loss of \$3,000.00 due to the landlord's failure to comply with the Act, regulations or the tenancy agreement. This claim is dismissed without leave to reapply.

- \$250.00 claim for court costs - lost income

As noted above, compensation is payable when the landlord does not comply with the Act, the regulations or the tenancy agreement. The Act does not provide for an applicant to recover costs for participating in the dispute resolution process aside from recovering the cost of the application fee. This claim is dismissed without leave to reapply.

- \$19,200.00 claim for rent - compensation for ending the tenancy

Section 51 of the Act provides for compensation to the tenant when the landlord ends a tenancy under section 49 for landlord's use of property and when the landlord has not taken steps to accomplish the stated purpose for ending the tenancy or fails to use the rental unit for the purpose the notice was given.

The landlord did not provide accurate information in their August 25, 2019 letter to the tenant when it stated the letter "serves as the required notice to terminate the tenancy as per the British Columbia Tenancy act." To end a tenancy for the landlord's use of the property under section 49(3) of the Act, the landlord must use form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property. Effective May 17, 2018, the Act requires four months' notice to end a tenancy under 49(6)—demolition, renovation or repair and conversion of the rental unit—and the required form is #RTB-29.

It is relatively easy for both landlord and tenant to determine how to legally end a tenancy. On the opening page of its [public website](#), the Residential Tenancy Branch provides "Tips for Landlords & Renters" and the first item in the list of [quick tips](#) is "Giving a notice to end a tenancy"; clicking on the link brings the user to the following information: *Landlords must provide written notice using an approved form to end the tenancy.* There is a link for more information about [ending a tenancy for landlord's use](#)

[of property and demolition of the rental unit.](#)

The landlord's use of the approved form to end a tenancy is a necessary precursor to the tenant's entitlement to compensation under section 51 of the Act. This is confirmed in the [Residential Tenancy Branch's policy guideline 50 "Compensation for Ending a Tenancy"](#) where it states,

a tenant who receives a notice to end tenancy for landlord's use under section 49, that complies with the requirements set forth in Section 52 [form and content] 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.

Although this section of the guideline refers specifically to the compensation of one month's rent (which the tenant received for September 2019), I find it also applies to the compensation payable when the landlord has not taken steps to accomplish the stated purpose for ending the tenancy or fails to use the rental unit for the purpose the notice was given. As the landlord's August 25, 2019 letter did not comply with Section 52(e) of the Act, the tenant did not receive a valid notice to end the tenancy and is not entitled to compensation. This claim is dismissed without leave to reapply.

- \$100.00 claim to recover the application filing fee

The tenant's application is unsuccessful, I do not award him the filing fee. This claim is dismissed without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety.

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: May 20, 2020

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Residential Tenancy Branch