



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code            MNDCT, FFT

### Introduction

This hearing was convened to address applications for dispute resolution filed by the Tenant. In each, the Tenant applies for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified the application package was served on the Landlord by registered mail on July 22, 2022. A copy of a Canada Post registered mail receipt showing the date and time of purchase and including the tracking number was submitted in support. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days later. Therefore, I find these documents are deemed to have been received by the Landlord on July 27, 2022.

The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant testified the tenancy began on August 1, 2016 and ended on June 30, 2021. The Tenant testified that rent was due in the amount of \$870.00 per month. The Tenant testified there are no outstanding issues with respect to a security deposit or a pet damage deposit.

The Tenant seeks a monetary order for \$10,440.00 as compensation under section 51(2) of the Act . The Tenant also seeks to recover the \$100.00 filing fee under section 72 of the Act.

The Tenant testified that she received a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 22, 2021 (the Two Month Notice). A copy of the Two Month Notice was submitted into evidence. The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or the Landlord's close family member. The Tenant testified that she moved out of the rental unit on June 30, 2021, in accordance with the Two Month Notice.

The Tenant testified that the Landlord did not move into the rental unit. In support, the Tenant submitted a video she testified was taken at the rental property on or about October 27, 2021. The video depicts the Tenant's son walking around the rental property. The video then blacks out and only audio is available. Knocking on a door can be heard and the Tenant's son can be heard asking a woman who answered the door if the Landlord is available. The woman responds by confirming the name of the Landlord and stating he was supposed to move into the rental unit but did not.

The Tenant also submitted a photograph of what she testified is the Landlord's vehicle parked at his home.

The Landlord did not attend the hearing to dispute the Tenant's

### Analysis

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

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or the Landlord's close family member.

Policy Guideline #2A provides clarification with regard to the meaning of "good faith". It means the party has an honest intention with no ulterior motive. Good faith means a party is acting honestly, intends to do what they say they are going to do, and does not intend to defraud or deceive the tenant. The burden of demonstrating good faith rests with the landlord.

Section 51(2) of the Act provides that compensation may be due if 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 if the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, I find the Landlord did not 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 accept the video evidence submitted by the Tenant which indicates that the Landlord had not yet moved into the rental unit by the end of October 2021, roughly four months after the tenancy ended.

Considering the above, I find the Tenant is entitled to a monetary order in the amount of \$10,540.00 which is comprised of \$10,440.00 in compensation under section 51(2) of the Act (\$870.00 x 12 months) and \$100.00 in recovery of the filing fee under section 72 of the Act.

Conclusion

The Tenant is granted a monetary order for \$10,540.00. The order must be served on the Tenant. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: August 15, 2022

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Residential Tenancy Branch