



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **LRE, OLC, LAT, CNL**

### **Introduction**

This hearing dealt with a applications by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice pursuant to section 49
- suspending or setting conditions on the landlord’s right of entry to the unit
- permitting the tenant to change the locks
- requiring the landlord to comply with the Act, Regulation and/or the tenancy agreement

The tenant filed two separate applications which were heard together.

The landlord DM appeared along with his counsel RK. Two witnesses for the landlord, SD and YH also appeared. The tenant JW appeared along with her counsel RR. FT appeared and said he was a prior tenant of the rental unit. FT is not a party to the application and was not a witness for either party. I asked FT to exit the conference call and told FT he would be contacted if required. FT did exit the conference call. FT was not called back into the conference call.

All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. All parties were affirmed.

The tenant provided evidence of proof of service of her materials and counsel for the landlord advised he was in possession of the tenant’s materials, including an August 24, 2022, amendment to the tenant’s dispute notice. I find that service of the tenant’s materials has been effected pursuant to sections 88, and 89 of the Act.

The landlord’s counsel submitted a decision from the Civil Resolution Tribunal on the date of the hearing. I did not consider service of this because it is not relevant to the

issues before me, and JW was a party to the proceeding and would have the decision in any event.

The tenant confirmed receipt of two, Two Month Notices to End Tenancy dated March 22, 2022 ("March 22 Notice"), and May 26, 2022 ("May 26 Notice"). Pursuant to section 88 of the Act the tenant is found to have been served with both the March 22 Notice and the May 26 Notice in accordance with the Act

#### Preliminary Issue - History

The history of the matter is as follows:

- The landlord served the March 22 Notice on the tenant, with an effective date of June 30, 2022;
- The tenant filed a dispute on May 17, 2022;
- The landlord served the May 26 Notice, with an effective date of July 31, 2022;
- The tenant filed a second dispute on June 8, 2022;
- The tenant paid full rent for August 2022;
- The tenant gave the landlord a Ten-Day Notice to vacate the property on August 16, 2022;
- The tenant filed an amendment to her dispute notice on August 24, 2022, seeking compensation for:
  - a) One month's rent as compensation under section 51 of the Act, and
  - b) Prorated compensation for rent for the period of August 27-31, 2022, after the tenant had vacated the property
- The tenant also withdrew their dispute of the March 22 Notice on August 24, 2022.

The parties agreed that the tenant vacated the rental unit August 26, 2022, and there was an understanding and acceptance by both parties that the May 26 Notice was valid. As the tenant has vacated the rental unit, both parties agreed that many of the issues raised are now moot and no longer need to be considered.

Some issues of compensation remain outstanding however the landlord has agreed that the tenant is entitled to compensation under section 51 of the Act.

### Issues to be Decided

The only issues remaining are:

1. Is the landlord required to pay the compensation under section 51 of the Act to the tenant JW?
2. Is the tenant entitled to compensation for rent paid for the period of August 27-31, 2022, after she vacated the unit?

### Background and Evidence

The subject tenancy commenced on December 1, 2018. Rent is \$1515.00 per month and the landlord currently holds a security deposit of \$750.00 in trust on behalf of the tenant. FT signed the lease and occupied the residence, however he vacated the residence prior to the matters arising that are the subject of this application.

The landlord is willing to pay the section 51 compensation, however he is aware of a dispute between the tenant JW and her former co-tenant regarding finances. Given that a new tenancy agreement was never signed by JW after FT vacated, the landlord wished direction regarding whether compensation had to be paid to the JW, FT, or both.

The landlord also disputed the request to pay prorated compensation for the last four days of August. His position is that the Ten-day notice was not sufficient, and the landlord was entitled to 30 days notice from the tenant. His position is that the effective date of the May 26 Notice was July 31, 2022. According to his interpretation of the legislation the tenant was not longer entitled to serve a Ten-Day Notice after July 31, 2022. After that date, the landlord was entitled to receive one month notice from the tenant.

The tenant's counsel submitted that because the hearing took place after July 31, 2022, the effective date of the May 26 Notice still had to be determined in a hearing. As the hearing took place after July 31, 2022, the reference to the effective date in section 50 of the Act should be interpreted to read that the effective date will continue past the date on the May 26 Notice until the validity of the notice is determined in a hearing if there is still an outstanding dispute.

Both parties agreed that the main issue is one of interpretation of section 50(1) of the Act.

## Analysis

### Section 51 Compensation

The validity of the May 26 Notice is not in dispute. The tenant moved out and has therefore accepted the notice as valid. There is no issue between the parties that the tenancy ended because of the May 26 Notice. Further, the landlord does not take issue with the legislative requirement to pay the tenant compensation as a result of the May 26 Notice. The only concern raised by counsel was the landlord's need to know with certainty to whom to give compensation.

Policy Guideline 13 describes co-tenants:

Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

It is also not in dispute that FT moved out prior to the landlord's service of either the March 22 Notice or the May 26 Notice on the tenant. Both notices only listed the tenant JW. and the only applicant on the present application is the tenant JW. Therefore, the monetary order for compensation will be directed to the named parties in the application.

### ProRated Compensation

The tenant seeks compensation on a prorated basis for the last four days of August 2022 subsequent to her departure from the rental unit. Section 50 of the Act states:

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under [section 49](#) [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*] or the tenant receives a director's order ending a periodic tenancy under [section 49.2](#) [*director's orders: renovations or repairs*], the tenant may end the tenancy early by

(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and

(b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3)A notice under this section does not affect the tenant's right to compensation under [section 51](#) [*tenant's compensation: [section 49](#) notice*].

RTB Policy Guideline 3 states:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA). Any further money paid after that date would not be owed to the landlord as rent.

This Guideline relates to a different section of the Act, but it gives guidance in analyzing the legislation in this case in that it supports that the effective date of the notice was unknown or suspended while there was an outstanding dispute of the Notice.

The passing of the July 31, 2022, effective date listed in the May 26 Notice did not alter the rights of the parties because a dispute had been filed. Section 50(1)(b) refers to the effective date of the landlord's notice, but once a dispute is filed, the effective date is unknown and effectively suspended until a decision is made after a hearing. Therefore, the tenant was entitled to give a Ten-Day Notice any time prior to a decision made as a result of a hearing. She gave her Ten-Day Notice on August 16, 2022, effective August 26, 2022, and she vacated the premises on that date. The Ten-Day Notice was given both prior to the hearing, and prior to the tenant withdrawing her dispute of the Two

Month Notice. At the time she gave her notice the effective date was therefore still unknown, thus a Ten-Day Notice was permissible.

Section 50(2) of the Act applies, and the tenant JW is entitled to the return of rent paid for August 27-31, 2022.

### Conclusion

The tenant is granted a monetary order for \$1710.48, comprised of compensation for one month's rent and the return of prorated rent under section 50(2) of the Act:

Item	Amount
One month rent	1515.00
Prorated rent	195.48
<b>Total</b>	<b>\$1710.48</b>

The monetary order must be served on the landlord. The monetary 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: September 15, 2022

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Residential Tenancy Branch