



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

The Tenant said he served the Landlord's adult son (who resides with the Landlord at the rental property) in person at the Landlord's residence on September 17, 2010 with a copy of the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Tenant (that the Landlord's son was acting as an agent for the Landlord), I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

### Background and Evidence

This month-to-month tenancy started on March 1, 2010 and ended on or about August 30, 2010 when the Tenant moved out. Rent was \$500.00 per month.

The Tenant said the Landlord verbally advised him on August 8, 2010 that his mother and father in law would be moving into the rental unit and therefore he asked the Tenant to move out by September 1, 2010. The Tenant said he completed a 2 Month Notice to End Tenancy on behalf of the Landlord and asked him to sign it on August 8, 2010 which the Landlord did. The effective date the Tenant wrote on the Notice was September 1, 2010. The Tenant said he was unaware at the time that the Landlord was required under the Act to give him 2 months notice.

The Tenant said he found new accommodations but at the last moment his new landlord decided not to rent to him and as a result, he had to use his disability income for September 2010 to hire a moving truck and pay for storage. The Tenant said he was rendered homeless for approximately 5 days until he could find emergency shelter. The Tenant argued that if the Landlord had not ended the tenancy early, he would not have been rendered homeless. Consequently, the Tenant sought punitive (or aggravated) damages as well as to be reimbursed the cost of his moving expenses.

## Analysis

Section 49 of the Act says that a Landlord may end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. If a Landlord ends a tenancy for this reason, he must give a Tenant a 2 Month Notice to End Tenancy. The Notice to end tenancy takes effect 2 clear months after it is served on the Tenant *unless the Tenant agrees to move out earlier*. Section 51 of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy is entitled to receive his last month's rent free or if he has already paid his last month's rent, the Landlord must return the Tenant's last rent payment.

In this case, I find that the Landlord served the Tenant with a 2 Month Notice to End Tenancy dated August 8, 2010. I also find that the Tenant paid his rent for August 2010 (which was the last month of his tenancy) but that he was not reimbursed for this rent payment as required by s. 51 of the Act. Consequently, I find that the Tenant is entitled to compensation of \$500.00.

There is no provision for punitive damages under the Act but rather aggravated damages. RTB Guideline #16 – Claims in Damages describes “aggravated damages (in part) as follows at p. 3:

“These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.”

I find that there is no evidence of “wilful, reckless or indifferent” behaviour on behalf of the Landlord in this matter that would warrant making an award of aggravated damages. The Tenant admitted that the Landlord knew little English and that was why he completed the 2 Month Notice on behalf of the Landlord. The Tenant also admitted that he did not know about the provisions of the Act regarding the notice period required when a Landlord ends a tenancy for his own use and that was why he inserted an effective date of September 1, 2010 on the 2 Month Notice. The Tenant further admitted that the Landlord did not force him to leave but rather he (the Tenant) believed he had to leave.

The form of the 2 Month Notice submitted into evidence by the Tenant states on the first page “***I hereby give you 2 months notice to move out of the rental unit.***” The 2<sup>nd</sup> page of the Notice provides information to a Tenant regarding his right to dispute the Notice as well as a contact number to obtain further information. Consequently, I find that the Tenant knew or should have known that the Landlord was required to give him



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

two months notice before the Landlord could end the tenancy (unless he agreed to end it earlier). Given that the Tenant completed the form and given further that the Tenant found other accommodations prior to the end of August 2010, I conclude that the Tenant agreed to move out earlier than the 2 month period provided for under the Act.

The Landlord cannot be held liable for the Tenant's failure to take reasonable steps to inform himself about his rights under the Act. The Landlord also cannot be held liable for compensating the Tenant because the Tenant's new landlord changed her mind and decided not to rent a suite to him at the last moment. Consequently, I find that there are no grounds for the Tenant's application for aggravated damages and to be reimbursed moving expenses and those parts of his application are dismissed without leave to reapply.

## Conclusion

A monetary order in the amount of **\$500.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: January 04, 2011.

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Dispute Resolution Officer