



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT

### Introduction

This hearing dealt with two applications filed by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Preliminary Matter: Jurisdiction

The tenants have submitted two applications seeking monetary compensation in the amount of \$35,000.00 for one application plus an additional \$3,100.00 for the other application. The jurisdiction of the Residential Tenancy Branch is limited by section 58 of the *Act* to the monetary limit of the *Small Claims Act*, which is currently \$35,000.00.

In this matter, the aggregate of the tenants’ claims exceeds the \$35,000.00 limit. I informed the parties that if we proceeded with the hearing, any compensation awarded in the hearing would be limited to \$35,000.00. I advised the parties that, if they wished to obtain compensation in excess of \$35,000.00, they would need to pursue this claim in the Supreme Court of British Columbia. The tenants agreed to reduce their claim to the \$35,000.00 monetary limit and the hearing proceeded on that basis.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants moved into the rental unit in September 2017. The monthly rent was \$3,100.00.

The tenants testified that they made multiple repair requests but the landlord was not prompt in dealing with all of the issue. The landlord testified that the tenants' complaints were unreasonable. The landlord also testified that the tenants were frequently late paying rent.

The tenants testified that the landlord's agent told the tenants in July 2018 that they needed to move out of the property by August 31, 2018 because the landlord's family was moving into the rental unit. The tenants testified that they also received a text message from the landlord stating the same thing. The tenants testified that the landlord also stated that renovations would be made to the rental unit. The landlord did not issue a formal notice to end tenancy.

The tenants move out of the property on September 1, 2018. The landlord returned the entire security deposit to the tenants.

The tenants later learned that the landlord did not move into the rental unit. Instead, the landlord rented the property to a new tenant. The landlords testified that the owner had quit her job in Taiwan and she planning to move into the rental unit. However, after she arrived in Vancouver, the landlord was offered a position in Taiwan which she accepted. The landlord returned to Taiwan and rented the property out again.

The tenants are seeking compensation of one month of free rent pursuant to section 51(1), compensation in the amount of 12 months of rent pursuant to section 51(2) and compensation for improper notice pursuant to section 52 of the *Act*.

## Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The tenants have claimed monetary compensation for alleged violations of sections 51(1), 51(2) and 52 of the *Act*.

The manner in which a tenancy can end set forth in section 44(1) of the *Act* which states:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 [*tenant's notice*];
    - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
    - (ii) section 46 [*landlord's notice: non-payment of rent*];

- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
  
- (v) section 49 [*landlord's notice: landlord's use of property*];
  
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  
- (vii) section 50 [*tenant may end tenancy early*];
  
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  
- (c) the landlord and tenant agree in writing to end the tenancy;
  
- (d) the tenant vacates or abandons the rental unit;
  
- (e) the tenancy agreement is frustrated;
  
- (f) the director orders that the tenancy is ended;
  
- (g) the tenancy agreement is a sublease agreement.

According to section 44, a landlord can end a tenancy by giving notice. However, the parties agreed that the landlord did not give notice to the tenants to end the tenancy other than verbal conversations and text messages. I find that the verbal requests and text messages to not be a notice to end tenancy pursuant to the *Act*. Section 52 of the *Act* mandates multiple form and content requirements for a notice to end tenancy which are stated as follows:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  
  - (b) give the address of the rental unit,
  
  - (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The verbal requests and text messages from the landlord did not satisfy any of these form and content requirements. I find that the landlord did not end the tenancy pursuant to a notice to end tenancy.

The tenants have requested compensation under section 51 of the Act. Section 51 stated that:

- 51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.
  - (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
  - (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
  - (b) 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.

A claim for compensation under section 51 is based upon the service of a notice to end tenancy. However, in this matter landlord did not deliver a notice to end tenancy. As stated above, I find that the verbal and text messages did not constitute an effective notice to end tenancy. In the absence of the service of a notice to end tenancy, I find that the tenants are not entitled to compensation pursuant to section 51.

Furthermore, I find that the tenants are not entitled to compensation under the Act for a violation of section 52 of the Act. Section 52 states the form and content requirements for a notice to end tenancy. Section 52 states that "...in order to be effective..." a notice to end tenancy must contain certain requirements and formalities. However, section 52 does not provide a monetary remedy if a notice to end tenancy is not in the proper form. Rather, section 52 just render such a deficient notice ineffective. In this matter I find that the landlord's verbal and text notices to end tenancy are not an effective notice to end tenancy pursuant to section 52. However, I do not find that this entitled the tenants to monetary compensation.

Since the tenants were not successful in their applications, I dismiss the tenants' requests for reimbursement of the filing fees pursuant to section 72 of the *Act*.

Conclusion

Both of the tenants' applications are dismissed in their 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: August 12, 2019

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Residential Tenancy Branch