



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

### Dispute Codes:

MNETC, MNDCT, FFT

### Introduction

On April 24, 2023 a hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Notice to End Tenancy, for compensation for monetary loss or money owed, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on April 24, 2023 was adjourned for reasons outlined in my interim decision of April 24, 2023.

In my interim decision of April 24, 2023, the parties were directed to provide written submissions on the issue of res judicata by May 31, 2023. Both parties have submitted written submissions.

I have considered the written submissions and, for reasons outlined in my interim decision of June 01, 2023, I concluded that the principle of res judicata does not apply to the Tenant's claim for compensation related to whether the Right of First Refusal was provided to the Tenant. As such, I will be considering that claim at these proceedings.

The hearing was reconvened on October 10, 2023 and was concluded on that date.

In my interim decision of April 24, 2023, I directed the Tenant to re-serve the Landlord with the Dispute Resolution Package and all evidence previously submitted to the Residential Tenancy Branch. The parties agree that these documents were served to the Landlord, via email, in May of 2023 and the evidence was accepted as evidence for these proceedings.

In my interim decision of April 24, 2023, I authorized the Landlord submit evidence to the Residential Tenancy Branch and to serve it to the Tenant. DM stated that no documentary evidence was submitted by the Landlord, with the exception of the written submission regarding res judicata.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings.

### Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51.3 of the *Residential Tenancy Act (Act)*, because the Tenant gave notice of her intent to enter into a new tenancy agreement when the renovations to the unit were completed and the Landlord did not comply with section 51.2(2) of the *Act*?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 1984;
- a Four Month Notice to End Tenancy, dated February 20, 2020, was served to the Tenant;
- the Four Month Notice to End Tenancy was served because the rental unit was being renovated/repared and vacant possession was required;
- the Tenant disputed the Four Month Notice to End Tenancy, which was the subject of hearings on May 12, 2020 and June 19, 2020;
- in 2020, the parties reached a settlement agreement regarding the issues in dispute at those hearings;
- one of the terms of the settlement agreement was that the tenancy ended on July 31, 2020;
- one of the terms of the settlement agreement was that the tenant “is entitled to the Right of First Refusal and to return to the building upon completion of all renovations and repairs at “market rent” minus 20% as per the City of Vancouver Policy”;
- the rental unit was vacated on July 31, 2020; and
- rent, during the latter portion of the tenancy, was \$1,045.00 per month.

TH stated that there were 25 units in this residential complex at the end of the tenancy. CL stated that there were 21 units in this residential complex at the end of the tenancy.

The Landlord and the Tenant agree that the Tenant did not serve the Landlord with a RTB-28, which is the form generated by the Residential Tenancy Branch to notify landlords that a tenant wishes to move back into a rental unit once renovations/repairs are complete.

DM stated that the repairs/renovations are still on-going, but they were largely completed in March of 2021. He stated that 4 occupants who were displaced as a result of the renovation/repair served the landlord with a RTB-28 and new tenancies were offered to those occupants, although none of them opted to enter into a new tenancy agreement with the landlord. He stated that the Landlord is aware of the information contained in a RTB-28, as that form had been provided by other tenants.

JD stated that the settlement agreement was sufficient notice of the Tenant's wish to enter into a new tenancy after the renovations/repairs were complete, and that the Tenant did not need to serve the Landlord with a RTB-28.

DM argued that if the Landlord had been served with a RTB-28, the Landlord would have offered a new tenancy to the Tenant.

TH stated that there was a "lot of paper flying around" and if the Tenant had submitted a RTB-28, that would have triggered an offer for a new tenancy.

JD submits that it was not the Tenant's responsibility to remind the Landlord of their obligation to offer a new tenancy to the tenant after the renovations/repairs were completed, as that notice was provided in the settlement agreement.

The parties agree that a new tenancy was not offered to the Tenant after the renovations/repairs were completed.

CL stated that she handed her forwarding address to an agent for the Landlord before she vacated the rental unit, although she does not recall the identity of that individual. She stated that she handed her forwarding address to this individual when she received a cheque from the individual to satisfy the payment outlined in their settlement agreement. She stated that this exchange occurred in the room the building contractor was using as an office in the residential complex.

TH testified that the Landlord did not receive a forwarding address from the Tenant; he does not recall who gave the settlement payment to the Tenant; and the building

contractor did not have an office in the residential complex. RW also testified that a forwarding address for the Tenant was not received.

JD submits that the Landlord could have contacted him at his business office, as he represented the Tenant in the 2020 proceedings.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant was paying monthly rent of \$1,045.00 at the end of this tenancy and the rental unit was vacated on July 31, 2020.

Section 49.2(1)(a) of the *Act* permits a landlord to end a tenancy if the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs; the renovations or repairs require the rental unit to be vacant; the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located; and the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a Four Month Notice to End Tenancy, which was served pursuant to section 49.2(1)(a) of the *Act*.

Section 51.2(1) of the *Act* stipulates that, in respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives an order under section 49.2 is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

Section 51.2(4) of the *Act* requires a tenant to give the notice referred to in section 51.2(1) in the "approved form". The approved form for providing this notice is a RTB-28.

On the basis of the undisputed evidence, I find there are more than 5 rental units in this residential complex. As such, I find that the Tenant was entitled to give the Landlord notice of the Tenant's intent to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs.

In my view, the primary issue to be determined is whether or not the settlement

agreement of July 19, 2020 was sufficient notice of the Tenant's intent to enter into a new tenancy after the renovations/repairs were complete.

I find that the reference in the settlement agreement to the Tenant's entitlement to the Right of First Refusal and to return to the building upon completion of all renovations was important, as it clarified that the \$18,000.00 payment the Tenant was to receive if she vacated the unit by July 1, 2020 did not negate her right to return to the unit upon completion of the repairs/renovations.

I find that this term in the settlement agreement served as sufficient notice that the Tenant intended to pursue her Right of First Refusal. If the term had required the Tenant to serve the Landlord with a RTB-28 to notify the Landlord of the Tenant's intent to pursue that right, I would expect the term would have read that the Tenant retains the right to serve the Landlord with proper notice of her intent to pursue her Right of First Refusal.

As the settlement agreement served as sufficient notice of the Tenant's intent to pursue her Right of First Refusal, I find that the Tenant had the right to enter into a new tenancy agreement once the renovations/repairs were complete, pursuant to section 51.2(1) of the *Act*.

Section 51.2(2) of the *Act* stipulates that if tenant gives notice of their intent to pursue their Right of First Refusal, the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant a notice of the availability date of the rental unit, and a tenancy agreement to commence effective on that availability date. I find that the Landlord did not comply with section 51.2(2) of the *Act*, because they did not offer a new tenancy agreement to the Tenant, as prescribed.

Section 51.3(1) of the *Act* stipulates that if a tenant has given notice of their intent to pursue their Right of First Refusal, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2). As I have concluded that the Landlord did not comply with section 51.2(2) of the *Act*, I find that the Landlord must pay \$12,540.00 to the Tenant, which is 12 times the monthly rent.

Section 51.3(2) of the *Act* authorizes me to excuse the Landlord from paying the penalty imposed by section 51.3(1) if extenuating circumstances prevented the Landlord from complying with section 51.2(2).

I have considered the submission that if the Landlord had received a RTB-28 from the Tenant, that would have triggered an offer for a new tenancy. While I accept that the need to offer the Tenant a new tenancy at the completion of the renovations/repairs, as required by the settlement agreement, may have been overlooked by the Landlord, I cannot conclude that this administrative error constitutes extenuating circumstances. I therefore decline to exercise the discretion granted by section 51.3(2) of the *Act*.

I have also considered whether service of a forwarding address should be considered extenuating circumstances. Even if I accepted the Landlord's submission that they did not have a forwarding address for the Tenant, I cannot consider this to be extenuating circumstances, as the Landlord did not even contemplate offering a tenancy agreement to the Tenant. The issue of a forwarding address is, therefore, irrelevant.

I find that the Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the cost of filing this Application.

### Conclusion

The Tenant has established a monetary claim of \$12,640.00, which includes \$12,540.00 pursuant to section 51.3(1) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary for \$12,640.00. In the event the Landlord does not voluntarily comply with this Order, it may be served to the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 *Act*.

Dated: October 11, 2023

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Residential Tenancy Branch