



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT, O

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant for a monetary order of \$25,000.00 for the Landlords’ failure to use the rental unit for the purpose stated in the eviction notice.

The Tenant also requests an order for payment of the filing fee. The Tenant’ advocate indicated that she was intending to request the maximum compensation authorized under the BC legislation and agreed to amend her claim from \$25,000.00 to \$3,700.00, representing two month’s rent; the Application was amended to reflect this change.

The Landlords, Tenant and Tenant’s mother (who represented the Tenant as her advocate) appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

The Tenant filed additional evidence one day prior to the hearing; as this was late and not submitted at least 14 days in advance, as required under rule 3.14 of the RTB Rules of Procedure, I disallowed that evidence. Verbal testimony was accepted, however. Although all evidence was taken into consideration at the hearing with the exception of the late-filed material, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Is the Tenant entitled to a monetary order for compensation for the Landlords' failure to use the property for the reason stated in a Two Month Notice to End Tenancy, pursuant to sections 51 and 67 of the Residential Tenancy Act ("Act")?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The Tenant agreed to rent the property for \$1,850.00 per month. The tenancy was the product of several consecutive written tenancy agreements executed between the parties since 2010, all of which were filed by the Tenant into evidence. The most recent version was for a fixed term from August to October 31, 2017, which the Tenant did not sign.

The Landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant at the end of August, 2017, the reason being that the Landlord's parents were to reside in the rental unit. The notice was disputed and the matter was heard on October 20, 2017, with the Arbitrator's decision stating that the parties had reached an agreement as follows:

*"The parties agreed to end the tenancy pursuant to the vacancy date of the 2 Month Notice, namely on October 31, 2017 at 1:00 p.m. The Landlords are issued with an Order of Possession which is effective for this date and time. This order may be enforced in the BC Supreme Court as an order of that court, if the Tenant fails to vacate the rental unit by this date.*

*The parties agreed the Tenant will receive her relief under the compensation provisions of the 2 Month Notice as follows. The Landlords will return the Tenant's uncashed rent cheque for October 2017 back to the Tenant at the rental unit address forthwith, and in any case on or before October 31, 2017.*

*The Tenant withdrew her claim for the recovery of the filing fee. As the parties have agreed to end the tenancy pursuant to the 2 Month Notice, I dismiss the Tenant's request to cancel the 2 Month Notice without leave to re-apply.*

*The parties confirmed their voluntary agreement to the above terms and conditions both during and at the conclusion of the hearing. This file is now closed. “*

One of the parties requested a clarification of the decision as the Landlord was unable to locate the October rent cheque and was unable to return it to the Tenant; it was later located (uncashed) and a cheque of one month's rent was issued to the Tenant.

It was noted in the Clarification Decision dated November 26, 2017 that “*the Landlord informs that due to an injury, his mother has been unable to move into the rental unit and plans to do so in 2018.*”. The Arbitrator further stated:

*“I now clarify that the Order of Possession granted to the Landlords was made independently of the compensation requirements to be provided to the Tenant. The agreement to end the tenancy did not hinge on the compensation requirement as this is a statutory obligation a Landlord must pay to the Tenant under Section 51(1) of the Act.”*

and at page 2:

*“The agreement made on October 20, 2017 and this Clarification Decision does not affect the Tenant's relief under Section 51(2) of the Act which provides that:*

*(2) In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

*Therefore, the Tenant is at liberty to also file an application for relief under Section 51(2) of the Act, but the Tenant bears the burden to prove both conditions laid out above have been met before filing.”*

The Tenant is claiming \$3,700.00 for 2 month's rent, arguing that the Landlord did not use the property for the purpose stated in the eviction notice. She provided evidence that there were advertisements in January to rent the rental unit for as much as \$2,800.00 on January 10 and January 20, 2018 and that painting had been done in the rental unit as well, to prepare it for rental at a significantly higher monthly rate than she had previously paid.

The Tenant's advocate claims that the parents of the Landlord had actually moved into a different home on October 18, 2017, right before the mother suffered an injury and was hospitalized. It was argued that at no time did the Landlords ask to enter the premises during the tenancy to do painting, which she states was not necessary as the walls appeared to be in good condition. She further states that the Landlord never made any request to store the parents' belongings at the rental unit even though the Tenant had agreed to vacate at the end of October.

The Landlords state that they had intended in good faith to have the parents move into the rental unit. They submitted medical records which show that the mother had an injury and upon her release, she required 24/7 care during her recovery. The father suffered health issues soon after, requiring medical attention as well. They prepared for the parents' arrival by painting the rental unit, but circumstances led to the parents being unable to relocate and the Landlords had to decide whether to sell or re-rent in order to maintain the expenses on the home.

The property manager states that the rental unit was eventually re-rented and that the new renters were disrupted by the Tenant and her advocate who made inquiries at various times about the rental unit. The Tenant asked to move back into the rental unit, but this request went unanswered.

The Tenant's advocate states that the Arbitrator had suggested to her that she knock at the door and ask about any lease agreement if new residents were seen at the house, which she did; his decision of November 26<sup>th</sup> notes the requirement for the Tenant to supply evidence to prove the conditions in section 51(2) have not been met and she states that she went to the rental unit when advised by friends who witnessed people moving in or out of the house to inquire. The Tenant states that the new renters moved in February 24, 2018 which was not denied by the Landlords.

## Analysis

As of May 17, 2018, a tenant may receive 12 months' rent if a landlord fails to follow through with reasons as stated in a Two Month Notice to End Tenancy. The new amendment allows the Director to consider extenuating circumstances to absolve a landlord from compensation. However, that amendment is not retroactive and does not apply to this Application, which addresses a Notice to End Tenancy served in 2017. The previous section 51, which was in effect and is applicable to this situation, reads as follows:

*"A tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord*

*(1) 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...*

*(2) In addition to the amount under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*The landlord...must pay the tenant an amount that is the **equivalent of double the monthly rent payable** under the tenancy agreement." [bolding added]*

The Landlords have satisfied me that they had the intention of moving the parents into the rental unit when they served the Notice to End Tenancy. Based on this notice and the purpose intended, the Tenant agreed to vacate; but she did not waive her rights under the legislation for compensation.

The Landlords' plans changed over time due to the medical condition of the parents. However, I find that it was still possible for family to move into the home after a reasonable period of recovery. A decision was made to re-rent instead, and for a much higher rent amount. The legislation is clear that the Tenant is entitled to two month's rent payment in addition to the one month's compensation she has already received, if the landlord does not use the rental unit for the purpose stated in the Two Month Notice.

In conclusion, I find that the Landlords have not taken steps to have the parents move into the house within a reasonable period after their hospitalization and that the house was not used for the stated purpose in the notice for at least 6 months after the October

31, 2017 effective date. The Tenant is entitled to compensation for having to relocate for this reason.

The Tenant has filed a monetary claim for two month's rent in the sum of \$3,700.00 and I am awarding her that amount. As she was successful in her claim, I am awarding the filing fee of \$100.00. As such, I grant a monetary order in the amount of \$3,800.00.

This order must be served on the Landlords and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlords fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

#### Conclusion

The Landlords shall pay forthwith to the Tenant the sum of \$3,800.00.

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 28, 2018

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Residential Tenancy Branch