



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FF

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for a monetary order for money owed or compensation under the Act and for recovery of the filing fee paid for this application.

The tenants, the landlord, and the landlord's legal counsel/interpreter attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary Matter

During the hearing, the tenants abandoned the portion of the monetary claim listed in their application and in their evidence, which is \$43,140.00, or the equivalent to 12 month's rent, which exceeded \$35,000.00. In other words, the tenants said they would forfeit \$8,140.00 of their claim in order for the Residential Tenancy Branch ("RTB") to consider their application against the landlord.

This forfeiture was based, in part, upon discussion in the hearing about the statutory limit under the Act, which is currently \$35,000.00. The parties were informed that I would consider the claim of \$35,000.00.

After the hearing and upon further review and consideration of the evidence, the landlord's legal submissions and of the Residential Tenancy Policy Guideline, I find that I would consider the full amount of the tenants' claim of \$43,140.00.

I have elected not to reconvene the hearing to hear the parties' respective positions on this issue. This decision is based on the fact that the legal arguments of the landlord's legal counsel on this issue were contained in his written submissions. In particular, the legal counsel cited the case of *Janus v. The Central Park Citizen Society*, 2019 BCCA 173 at para. 26, among others, and made arguments on this particular point.

I also note that a property management company is listed as the landlord on the written tenancy agreement and the Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two Month Notice") received by the tenants. During the hearing, the evidence disclosed that the property management company no longer represented the owner of the rental unit, the respondent listed in the style of cause page of this Decision. I accept that the proper party in this dispute as respondent/landlord is the one listed in this case. I further note that the landlord's legal counsel represents the owner/listed landlord.

#### Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

#### Background and Evidence

The undisputed evidence of the parties is that this tenancy began on March 20, 2016, and monthly rent was \$3,595.00. The rental unit was in a single family dwelling.

In support of their application, the tenant, JW, submitted that they received a Two Month Notice from the landlord on or about January 13, 2019, which listed an end of tenancy date of March 31, 2019. The tenant submitted a copy of the Notice, which was signed by the landlord's agent, and as a reason for ending the tenancy, listed that the rental unit will be occupied by the landlord or a close family member of the landlord

The tenant submitted further that they chose to accept that the tenancy was ending and vacated the rental unit on March 31, 2019.

The tenants submitted that they noticed in mid-April 2019 that the rental unit was listed for sale. Upon further review, the listing appeared to show that the rental unit was listed for sale on or about April 1, 2019, the day after they vacated. The tenant submitted a copy of the listing.

The tenant submitted that they had no way of knowing if the rental unit had been sold, but said the listing was taken down in July 2019.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose on the Notice, in the amount of \$43,140.00.

*Landlord's response-*

The landlord's legal counsel, through oral and written submissions, confirmed that the rental unit was placed on the market for sale on April 1, 2019, the day after the tenants moved out, and taken off the market a couple of weeks prior to the hearing.

In support, the legal counsel submitted that the rental unit was the former home of the landlord and her husband, BL, and is registered in the name of the landlord only. The legal counsel submitted that the landlord rented the rental due to financial pressure and because the landlord's family do not live in British Columbia.

Presently, both the landlord and BL live out of province, but that they always intended to move back to the city where the rental unit is, citing various reasons, such as proximity to friends, milder weather, and a larger population of the same race as the landlord for her children to grow up around.

The legal counsel submitted that BL began looking for banking job opportunities in August 2018, in the geographical area where the rental unit is located. According the legal counsel, BL had talks with several employees with other banks as well as seeking internal opportunities for transfer with his current banking employer.

In early 2019, according to the legal counsel, BL thought he would get a position internally with his current employer in the same geographical area where the rental unit

is very soon and instructed their agent to serve the tenants a Two Month Notice, with an effective move-out date of March 31, 2019.

The legal counsel submitted the transfer did not happen as soon as BL thought, and as BL's salary was the only source of income for the family, they thought about selling the home to relieve the financial pressure.

The legal counsel confirmed that they did not update the tenants as the service agreement with their agent had been terminated, the family was in another province, they did not know they had to update the tenants, they did not know when BL could land a position in the city in the same geographical area where the rental unit is located and did not know when they would need the property. The legal counsel also wrote that the landlord was also thinking of buying or renting another property near the daycare centre for the children.

The legal counsel submitted that as the landlord and BL had "no good plan", they made the rash decision to sell the house.

The legal counsel submitted that BL had an interview for a local branch position on June 27, 2019, according to the legal counsel and received an offer. As a result, BL will start at the bank in a city in the same geographical area on August 5, 2019. The legal counsel submitted an undated copy of a letter from a branch manager confirming the transfer and start date.

The legal counsel submitted that the landlord's family's circumstances have changed and they now intend on moving into the former rental unit. The legal counsel argues that it is a reasonable period in the landlord's circumstances between the effective date of the Notice and the occupation date of July 28, 2019.

The landlord's legal counsel submitted that additionally, there are extenuating circumstances. The delay in moving into the rental unit due to BL's employer's internal procedure was beyond the control of the landlord, notwithstanding BL's "persistent and active pursuit of the position following the intention".

The landlord's additional evidence included copies of two messages between BL and officials at two other banks in the same geographical area where the rental unit is located. One message from September 2018, from a regional manager, thanked BL for adding him to his network and welcomed the opportunity to have an informal coffee to discuss career goals. Another message from a regional vice-president of another bank,

dated November 15, 2018, stated she would love to connect with BL “for career opportunity”. I note that BL’s response was dated December 21, 2019, in which he wrote he was in another country presently, but would return to Canada in a “couple months”.

The legal counsel cited *Janus* to dispute the limits and jurisdiction of Residential Tenancy Policy Guideline 27 in interpreting the Act, along with legal arguments.

The legal counsel said that Madam Justice Fenlon in *Janus* distinguishes subject matter jurisdiction and monetary jurisdiction, citing the case of *Ahmed v Canna Clinic Medicinal Society*, 2019 BCCA 319 at paras 10 and 16. The legal counsel argued that unless the tenants here abandon their excessive monetary claim above and beyond \$35,000.00, i.e. the monetary jurisdiction, the Director shall decline to exercise jurisdiction under section 58(2) of the Act.

### Analysis

In the case before me, the undisputed evidence shows that the landlord issued the tenants a Two Month Notice to End Tenancy for Landlord’s Use of the Property, pursuant to section 49 of the Act, and in this case, the landlord listed that the rental unit will be occupied by the landlord or the landlord’s spouse or a close family member.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months’ rent under the tenancy agreement. (emphasis added).

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the Notice.

In this case, I find the landlord engaged in conduct which would not have allowed her to take reasonable steps to accomplish the stated purpose of her and her family moving into the rental unit within a reasonable time. The landlord immediately placed her home

on the market for sale the day following the tenants moving out and has stayed living out of province.

I find this supports that the landlord did not issue the Two Month Notice for the stated purpose.

I further find the landlord has submitted no evidence to prove that her husband engaged in anything other than two general inquiries in 2018 about a possible job opportunity in and around the regional area of the rental unit. No evidence was submitted about ongoing negotiations or applications with his present employer and of particular note, nothing from January 2019, when the Two Month Notice was issued.

I find no evidence from the landlord to support why they believed a job offer in the area of the rental unit was imminent or even that there was a realistic chance that a job offer would materialize. I do not find an undated letter about a start date of August 6, 2019, in a bank in the area of the rental unit sufficiently supports a Notice to End the tenancy issued on January 13, 2019.

I find it reasonable that the landlord would wait until a job offer to her husband with a definite start date happened before issuing the Two Month Notice, displacing the tenants.

In particular, I relied upon the landlord's evidence showing that BL was out of the country on December 21, 2018, and that he would not be returning to Canada for two months.

I also find it unlikely the landlord intended to occupy the rental unit as the landlord would have engaged the services of a real estate agent well in advance of the listing date, April 1, 2019. A realtor would need time to take photographs of the home, research comparative prices of similar homes on the market, prepare and send contracts to their clients living out of province, etc.

The landlord's own evidence showed that they also considered purchasing another property closer to their children's daycare center.

For the above reasons, I find the landlord submitted insufficient evidence to support or prove the reason listed on her Two Month Notice.

As to the landlord's assertion that extenuating circumstances prevented her from accomplishing the stated purpose, I find the landlord submitted insufficient evidence of these. I find it was within her control to wait for a job offer and confirmation prior to issuing the Two Month Notice, as there is no guarantee a job offer would ever materialize.

For the above reasons, I therefore find on a balance of probabilities that the landlord did not take steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

As to the amount of that compensation in excess of the statutory limitation of \$35,000.00 allowed under section 58(2), I refer to Policy Guideline 27. This section states that if the claim is for compensation under section 51(2) or 51.3 of the Act, as is the case here, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration.

I distinguish the *Janus* case from the present case, as that case did not involve a Residential Tenancy Act dispute and the determinative issue involved a limitation period.

Based upon my interpretation of section 51(2) of the Act and Policy Guideline 27, I find the tenants are entitled to a monetary award equivalent to 12 months' rent under the tenancy agreement, and in this case, the monthly rent was \$3,595.00. I find this amount is not for damage or loss, but is for compensation due under the Act.

I therefore grant the tenants a monetary award of \$43,140.00, the equivalent of monthly rent of \$3,595.00 for 12 months.

I also grant the tenants recovery of their filing fee of \$100.00 paid for their application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenants are entitled to a total monetary award of \$43,240.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$43,240.00.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent and recovery of the filing fee is granted. They have been granted a monetary order for \$43,240.00.

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: July 30, 2019

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Residential Tenancy Branch