



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT, FFT

### **Introduction**

This hearing was convened in response to an application by the tenant for a Monetary Order pursuant to Section 51(2) of the *Residential Tenancy Act* (the Act), and to recover the filing fee.

Both parties attended the hearing. The landlord acknowledged receiving the application and evidence of the tenant, as provided to this proceeding. In turn, the tenant acknowledged receiving all the evidence of the landlord, as provided to this proceeding. I have accepted all relevant evidence submitted in accordance with the Rules of Procedure. The parties were given opportunity to provide testimony, present witnesses, make relevant submissions, ask questions, and respond to the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all the relevant evidence that they wished to present.

‘Rental unit’ refers to the dispute address before and after the tenant vacated.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant undisputed evidence in this matter is as follows. This tenancy started in 2015 and ended December 01, 2018 pursuant to a Two Month Notice to End for Landlord’s Use of property (the Notice), when the tenant acted on the Notice and vacated prior to the effective date of that Notice. The rent payable under the tenancy agreement was \$2430.00 per month due in advance on the 1<sup>st</sup> of the month. I have benefit of the Two Month Notice to End Tenancy for Landlord’s Use dated September 22, 2018, which states the purpose of the notice as pursuant to **Section 49(3)** of the Act

in which the landlord or the landlord's close family would occupy the rental unit (a house).

The relevant disputed evidence is as follows. The tenant testified they believe that the landlord has not resided or occupied the rental unit since the effective date of the Notice. The tenant testified they have repeatedly driven by the property finding an absence of indicators of occupancy. The tenant testified that they were told by an agent for the landlord that the landlord was returning from China in February or March 2019. Also, the tenant provided a signed statement by an adjoining neighbour (LV) of the rental unit dated August 08, 2019, which states,

*I am the neighbour of [tenant(s)] and their two children. The Family lived at [dispute address] for several years. Since [tenant] and her family moved out in December 2018, no one has resided next door. To the best of my knowledge there has been no recent major renovations on the home.*

*Thank you,*

*(as written – redacted for privacy)*

The tenant testified the neighbour is in a 'block watch' capacity and often sits outside, therefore knows of what they stated in their note.

The tenant also provided evidence that the rental unit was subsequently listed for sale.

The landlord of this matter testified that they first began occupying and residing in the rental unit December 08, 2018 and continue to reside there as their primary residence. The landlord was asked several times if they "reside", "occupy", or "live in" the rental unit to which they repeatedly stated that they do so. The landlord testified they did not understand why the neighbour denied knowing they reside there. The landlord also testified that any information the tenant may have received about someone coming from China referred to the landlord's parents who arrived February 23, 2019 as first-time permanent residents, all for which the landlord provided proof of their arrival and status upon arrival. The landlord testified the rental unit indeed became listed for sale in June 2019 and that today (December 03, 2019) it remains unsold and listed for sale. The landlord explained it was understood that the rental unit would take some time to sell due to market conditions, and that meanwhile they occupy the rental unit.

## **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

The standard of proof in a dispute resolution hearing is on a balance of probabilities, and the onus to prove their case is on the person making the claim. In this matter it means that it is the burden of the tenant to prove that more likely than not the facts occurred as claimed.

The tenant is required to prove that the landlord did not begin residing and occupying the rental unit within a reasonable time following the effective date of the Notice and subsequently did not continue to do so for a period of at least 6 months.

The tenants seek compensation under **Section 51(2)** of the Act which states:

- 51(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*
  - (c) 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.*

The *effective date* of the landlord's Two Month Notice for Landlord's Use is aptly stated on page 2 of the Notice to End form, which states: *The effective date of this Notice is the date that you must move out by.* **Section 49 (2)** of the Act further prescribes that for a date to be an effective date, the Notice must provide at least 2 months time to vacate (2 month's notice) and that the given move-out date must occur on the last day of a

rental period (the day before the rent is due). Therefore, I find the effective date of the landlord's Notice to End as January 31, 2019.

I find the tenant's evidence of their impression of the rental unit upon driving by it, insufficiently supported. I find the statement of the landlord's agent to the tenant as hearsay and effectively unreliable. I find that listing the rental unit for sale aptly addresses the future endeavours of the landlord, however does not support that the landlord has failed to accomplish their stated purpose for ending the tenancy, or as a consequence of listing the rental unit for sale the landlord has failed to accomplish the stated purpose for ending the tenancy. Therefore, I assign all the foregoing limited evidentiary value.

I further place limited evidentiary weight in respect to the neighbour's statement. I find that such a statement, standing alone and unsupported, and the author not subject to cross-examination, is rebuttable, and of limited evidentiary value.

As a result of all the above, taking into consideration all oral testimony and other evidence presented before me, I find on a balance of probabilities that the tenant has not met their onus of providing sufficient evidence to support their claim against the landlord for compensation under Section 51(2) of the Act. As further result, I must **dismiss** the tenant's application, *without leave to reapply*.

### **Conclusion**

The tenant's application is dismissed, without leave to reapply.

### **This Decision is final and binding**

*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: December 04, 2019

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Residential Tenancy Branch