



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The respondent confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the respondent duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

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

Is the tenant entitled to a monetary award for the purchaser's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2019, with monthly rent set at \$1,200.00, payable on the first of every month. The tenant was returned his security deposit of \$600.00 at the end of the tenancy.

It was undisputed by both parties that this tenancy had ended on December 31, 2019, after the tenant was served with a 2 Month Notice by the landlord in October of 2019. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as the new owner of the home, the respondent in this hearing, did not use the home for the stated purpose on the 2 Month Notice. The respondent confirmed in the hearing that the intention was for the respondent and his family to move in, but due to a sudden and unforeseen change in circumstances, the respondent had decided to rent out the home instead.

The respondent continues to reside in a condo in Maple Ridge, while the home was re-rented for \$1,700.00 per month. The respondent provided a statement in his evidence that detailed the circumstances behind this decision, including the sudden loss of his job shortly after the issuance of the 2 Month Notice. The respondent provided a document from the employer confirming the loss of his employment on October 31, 2020. Furthermore, the respondent was faced with the stressful realities of taking care of his young family after losing his job. The respondent also took in consideration the mental health of his wife, and the burden of caring for a young child in a home that was further away from his wife's family.

The respondent stated that the decision was a difficult one as he and his family envisioned starting their life in this new home. The respondent provided further details of why this specific home was purchased. The respondent and his family started looking for a home in July of 2019, but were unable to find a 3 bedroom home within their budget in the same city where they currently reside. The respondent expressed the emotional toll of the events that have taken place, and expressed that the intention was always to reside in the home. The respondent provided a copy of an email from his real

estate agent informing him that the home was rented out to the tenant on a month-to-month basis, and knew the home was being sold.

The email dated January 25, 2020, read:

*“The Listing agent that sold us the condo told me there was a longer term tenant that was renting the place prior to the most recent tenant moving out. This long term tenant gave their notice around August 2019 since the place was up for sale and the potential Buyers would want to move into the home. Due to this sale being a separation sale between the two owners, the rental management placed a tenant in the home at below-market rent to have someone in there (since the place was taking longer than expected to sell) on a month to month basis. This agreement between the tenant and landlord was understood to be temporary as the condo was listed to sell and it most likely a family to move in. This is why there was not a 1-year lease signed with this new tenant”*

The respondent submitted calculations in his evidentiary materials that calculates a deficit of \$237.79 per month taking in consideration strata fees of \$332.64 per month, property management fees of \$136 per month and mortgage payments of \$1,462.35 per month. The respondent testified that despite the rental of the home at \$1,700.00 per month, the family still experienced a financial loss.

In cross examination, the tenant posed several questions to the respondent including why he was not approached about continuing the tenancy as the respondent lost his job at the end of October 2019, and the tenant was not to move out until December 31, 2019. The respondent answered that at the time he wanted to follow through with the original plans to move into the home, and this idea never crossed his mind.

The tenant also asked why the respondent purchased a home in an entirely different city than the current city where the respondent and his wife’s family reside. The respondent testified that they required a 3 bedroom home within their budget, which necessitated the move to a different city.

The respondent requested that his circumstances be considered along with his family’s original intentions to reside in the home. The tenant is requesting compensation on the grounds that the respondent failed to comply with the *Act*, combined with the fact that he, too, faced hardship due to the end of this tenancy.

## **Analysis**

Section 51(2) of the Act reads in part as follows:

*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*

*(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.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the respondent re-rented the home instead of occupying it. By doing so, the landlord failed to comply with section 49(3) of the Act.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental*

*unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I find that the reasons provided for re-renting the home are not sufficient to support that there were extenuating circumstances that prevented the respondent and his family from using the home for the stated purpose. Although the respondent lost his job and faced both the financial and emotional burden of dealing with this after the 2 Month Notice was issued to the tenant, I find that the respondent did have other alternatives such as allowing the tenant to remain in the tenancy. The facts provided by the respondent show that he had lost his job on October 31, 2019, and had over a month to approach the tenant with the possibility of continuing the tenancy instead of hiring a property management company at a cost of \$136.00 per month to rent to a new tenant. The respondent's own testimony was that he still faced a deficit with the re-rental of the home at \$1,700.00 per month.

Apart from the financial hardships faced by the respondent and his family, the respondent also described the emotional toll the circumstances have taken on his family. Although I am sympathetic towards the respondent and his family, and the difficulties that they have faced, I must consider the fact that the tenant, although on a month-to-month agreement, was entitled to remain in the tenancy despite the sale of the property unless the tenancy was ended in accordance with the *Act*.

I find that the respondent's explanations do not fall under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the respondent's noncompliance. I issue a monetary award to the tenant in the amount of \$14,400.00.

As the tenant was successful in his claim, I find that he is also entitled to recover the filing fee for this application.

**Conclusion**

I issue a \$14,500.00 Monetary Order in favour of the tenant in compensation for the respondent's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: June 9, 2020

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Residential Tenancy Branch