



# 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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") a monetary order for damage or compensation under the Act for the Tenant in the amount of \$16,800.00, and to recover the \$100.00 cost of her Application filing fee.

The Tenant, the Landlord, his wife, S.G., and counsel for the Landlord, G.P. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2013, with a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit.

The Parties agreed that the tenancy ended, because the Landlord served the Tenant with a Two Month Notice to End the Tenancy for the Landlord's Use of the Property, signed and dated April 30, 2019 ("Two Month Notice"). The Parties agreed that the Landlord served the Tenant with the Two Month Notice on April 30, 2019, in person to the Tenant's 21-year old son. They agreed that the Two Month Notice had an effective vacancy date of June 30, 2019, and that the ground for the eviction was that the Landlord or a close family member of the Landlord intended in good faith to occupy the rental unit.

The Tenant claims that the Landlord did not pursue the stated purpose of the Two Month Notice; she said in the hearing that the residential property is vacant. She said, as a result, she is eligible for compensation based on section 51 of the Act.

The Landlord said that there is no one living there now, as the residential property was demolished in April 2020. The Landlord said that once the Tenant moved out, the Landlord did some basic renovations, and in approximately mid-August 2019, he moved in.

The Landlord said that his parents live in Abbotsford and that they're elderly. The Landlord said that his wife was living in the residential property all the time, with the odd weekend away, and that he was there most of time. However, he said that he shares caregiving responsibilities for his parents with his brothers. He said they have only one car, and his parents do not have a vehicle, and that he is there as often as he can be to help them.

The Landlord said they determined they should demolish the residential property and build bigger house, so that his parents can move into it.

The Landlord said he submitted copies of the hydro bill and bank statements showing they were living in the house. He said the plumbing bill and others show that they replaced elements in kitchen stove in October 2019. He said this supports that this was their principle residence. He is retired, so can help his parents more than can his brothers. He said his family lived in the residential property for seven and a half months before they decided to demolish the house and rebuild, so that his parents could live with them.

The Landlord submitted an invoice dated August 17, 2019, from a local renovation company stating that they did the following renovations to the residential property:

1. Painted the interior of the house;
2. Replaced 520 square feet of flooring to laminate; and
3. Changed two toilets.

This invoice said that these renovations were completed on August 10, 2019 and that the Landlord was charged \$4,530.00 for this work.

The Landlord also submitted an invoice dated October 16, 2019, from a local appliance store that billed the Landlord \$130.82 for a stove repair for a house at the rental unit address.

The Landlord submitted electricity bills dated August 21, 2019 for \$43.18 and December 19, 2019, for \$28.43, with \$290.79 being overdue charges.

The Landlord submitted gas bills for the following dates and amounts:

August 19, 2019:	\$18.14
September 18, 2019:	\$16.85
October 17, 2019:	\$31.56
November 18, 2019:	\$32.63
December 17, 2019:	\$115.06

The Tenant said:

I was in front of the home more than once. In a picture from January 24, they had already started clear cutting the whole quarter acre the house sits on. I could have asked my neighbours to participate [in the hearing], but didn't think about it. They said no one lives there.

When I lived there, my [gas] bill was never [as low as] \$18.14 to live there.

The Landlord asked why he would have spent close to \$5,000.00 renovating the residential property, if he had intended to demolish it at the time of issuing the Two Month Notice.

However, the Tenant said: "I truly believe that no one's lived there. Why do upgrades when they're going to bring her down within a month? The hydro bills are all too small to have anyone living there. I paid way more than that . . . to heat and keep electricity on."

The Landlord said that when looking at the electricity bill, it was \$290.00 for the previous months and then one was for \$28.00. He said there are some variations, and some with the gas. He noted that the December bill for \$115.00 was normal. He said that the bills for October and November were admittedly lower.

The Landlord said:

We gave notice to [the Tenant] and she moved end of June, and we moved in August 15, after renovating it. [The Tenant] is a nice person. She knows I'm looking after my parents back and forth. We wouldn't have moved her, if we weren't going to move in. Why lose the income and keep the house empty? Then we will have to pay the empty home tax. We moved in and I was back and forth looking after my parents. Then their health got worse, so we decided to tear it down in February; we made up our mind, so I don't have to go back and forth, and they can move in with us.

We moved out at the end of March and are living full time with my parents.

The Tenant said: "Maybe a month after I moved out, the clear cutting began taking trees down. Why take all beautiful trees down, if you were living there?"

The Landlord replied: "That tree was very, very old and could fall on that house."

Counsel asked to examine the Landlord's wife, who said that they moved into the rental unit on August 15, 2019 and that they moved out at the end of March 2020. She said they were residing at the residential property, although her husband spent time with his parents, as well. She said they are now living with the Landlord's parents, as the residential property has been demolished. She said they are planning on moving back when the new house is built.

Counsel summed up the Landlord's position as follows:

Our submission is that they when they gave notice, they had the intention of living in the house; to spend \$4,500.00 on renovations is consistent with that. Also, [the Landlord's] main concern is helping his parents. Going back and forth is not the best; therefore, they will build a new house. [The Landlord] recognized that the only way [for their family to function] was to bring his parents there, and not spend so much time apart. The house came down quickly; the permit was applied for a month earlier. They made a plan at the end of February, and moved out at the end of March to do the work. Their intention is still to be the occupants of that property, and that will house his parents, too. Their argument is that they did comply with the requirement under the [Two Month Notice].

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord 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.

Based on the evidence before me, overall, I find that the Landlord made some cosmetic renovations to the residential property prior to moving in a month and a half after the Tenant vacated the rental unit, which I find to be within a reasonable amount of time after the tenancy ended. While the electricity bills are oddly low, the low gas bills are more reflective of the seasonal temperatures over the months – lower in the summer and higher in the winter; as such, I find that these do not support the Tenant's position.

Furthermore, I find on a balance of probabilities that the Landlord used the rental unit for

the stated purpose within a reasonable time after the eviction and for over six months. I find that the evidence before me overall indicates that the Landlord did use the rental unit for the stated purpose during the legislatively relevant time period.

I, therefore, dismiss the Tenant's application wholly, as having provided insufficient evidence to support her claims pursuant to section 51 of the Act in this matter.

### Conclusion

The Tenant is unsuccessful in her Application for compensation from the Landlord under section 51 of the Act. The Tenant provided insufficient evidence to counter that of the Landlord in this regard. I found that the Landlord did pursue the stated purpose of the Two Month Notice.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 6, 2020

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Residential Tenancy Branch