



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 07, 2020 (the "Application"). The Tenants applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing for both Tenants. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord provided the correct spelling of his name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence provided and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?

### Background and Evidence

The Tenants sought \$34,342.50 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the "Act") based on the Landlord failing to follow through with

the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2019 (the "Notice").

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The parties agreed rent at the end of the tenancy was \$2,921.25 per month.

The Notice was submitted as evidence. It has an effective date of May 31, 2019. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member.

The Notice shows it was provided to the Tenants in person March 31, 2019. The Tenant confirmed this.

The parties agreed the tenancy ended May 31, 2019.

The Tenant testified as follows. Neither the Landlord nor a family member of the Landlord moved into the rental unit once the Tenants vacated. On June 10, 2019, the Tenants found an advertisement on a rental website for the rental unit. The advertisement shows the Landlord seeking \$600.00 more in rent than what the Tenants were paying which shows the Landlord was seeking more money for the rental unit. The Landlord was not permitted to do this.

The Tenant further testified as follows. The Tenants moved a street over from the rental unit. They know the Landlord never moved in. They could see who was living in the rental unit because they walk by it every day. When they were doing the final inspection, the Landlord said his father was moving into the rental unit which never happened.

The Tenants submitted the rental website advertisement for the rental unit showing rent of \$3,500.00.

The Tenants submitted email communications between the parties from April 27<sup>th</sup> and 28<sup>th</sup>.

The Landlord testified as follows. He sold his house as shown in the evidence submitted. He intended to move into the rental unit. When he sold his house, he moved in with his father. He realised his father was having health issues, needed care and could not live on his own. He called Tenant G.B. at the beginning of April and told him the Tenants could stay in the rental unit because he would not be moving in.

Tenant G.B. requested a two year lease and said the Tenants did not want to stay unless there was a two year lease.

The Landlord further testified as follows. He called the RTB about what to do. He then emailed the Tenants on the 23<sup>rd</sup> saying he was withdrawing the Notice. Nobody had called him for a reference for the Tenants at that point. He sent the Tenants a second email on the 27<sup>th</sup>. He received a call from a landlord for a reference for the Tenants. He received an email from the Tenants on the 28<sup>th</sup> or 29<sup>th</sup> saying they found another place. The Tenants had the option of staying at the rental unit.

The Landlord further testified as follows. He moved his furniture into the rental unit when the Tenants vacated. He did advertise the rental unit. He had a lot of requests. He did not rent the unit out. It was on the rental website for 45 days. Nobody lived in the rental unit until October 15<sup>th</sup>. He was in a dilemma in relation to his father as he did not know if his father was going to go into a home. He could not decide what to do with the rental unit.

Given the above testimony, I sought to confirm with the Landlord that he agrees he or a family member never moved into the rental unit. The Landlord then said he did move into the rental unit. At first, he said he moved his furniture in. He then said he stayed at the rental unit once or twice a week starting in June. He said he was otherwise staying at his father's.

The Landlord testified that he rented the unit to a friend from October 15, 2019 to November 30, 2019. I understood the Landlord to testify that he resumed staying at the rental unit once in a while after renting it to a friend.

The Landlord took the position that the Notice was withdrawn verbally and by email twice. I asked the Landlord if his position was that the Tenants agreed to him withdrawing the Notice. He said he did not hear back from the Tenants. He then said they did obviously because they had the emails.

I asked the Landlord to point out where in the email on the 28<sup>th</sup> the Tenants agreed to him withdrawing the Notice. The Landlord stated that there was no agreement, but the Tenants were told they could stay on and they decided not to, they decided to move.

The Landlord confirmed he is relying on extenuating circumstances being his father needing care due to medical issues. He also testified that he stayed at the rental unit on weekends.

The Landlord provided written submissions. These state that he did not agree to the two year lease sought by Tenant G.B. I note that the written submissions do not state that the Landlord stayed at the rental unit once in a while starting in June.

The Landlord submitted emails sent to the Tenants April 23<sup>rd</sup> and 27<sup>th</sup>, 2019 in relation to the Landlord withdrawing the Notice.

The only other documentary evidence the Landlord submitted relates to the sale of his house.

In reply, the Tenant acknowledged the Landlord told the Tenants they could stay at the rental unit. The Tenant said the Tenants had already committed to another place. The Tenant said a two-year lease was never discussed. The Tenant testified that she never heard about the Landlord calling Tenant G.B. The Tenant denied that either of the Tenants agreed to the Notice being withdrawn.

At this point in the hearing, the parties were finished providing their testimony. I went through procedural issues with the parties. It was not until after this that the Landlord said the rental website advertisement the Tenant is referring to is actually in relation to the lower part of the house, not the rental unit. He took the position that the Tenant is talking about an October advertisement. The Landlord denied advertising the rental unit in May, June or July.

In reply, the Tenant pointed out that the file name for the rental website advertisement shows the screen shot was taken June 10, 2019.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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.

Policy Guideline 11 deals with withdrawing notices to end tenancy and states:

### C. WITHDRAWAL OF NOTICE TO END TENANCY

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

#### D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

Policy Guideline 50 states at page two and three:

##### Accomplishing the Purpose/Using the Rental Unit

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months...

#### E. EXTENUATING CIRCUMSTANCES

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

The Landlord took the position that he withdrew the Notice. The Landlord could not withdraw or cancel the Notice without the Tenants' consent. I do not find that the Tenants consented to the Landlord withdrawing or cancelling the Notice.

I do not have further evidence before me to support the Landlord's testimony about his conversation with Tenant G.B. in April. I do not find the Landlord's verbal testimony about the conversation to be particularly compelling evidence. However, regardless, the Landlord testified that he told Tenant G.B. that the Tenants could stay in the rental unit and Tenant G.B. said only with a two year lease. The Landlord acknowledged he did not agree to this term. Therefore, Tenant G.B. cannot be said to have agreed to the Landlord withdrawing or cancelling the Notice because Tenant G.B. proposed a condition that the Landlord did not agree to. Even on the Landlord's own evidence, Tenant G.B. did not agree to withdrawing or cancelling the Notice verbally.

The Landlord then attempted to withdraw the Notice by email April 23<sup>rd</sup> and April 27<sup>th</sup>, 2019. However, the Tenants replied on April 28, 2019 stating they had already found another place and would vacate May 31, 2019. This is not an agreement to the Notice being withdrawn or cancelled. The Tenants did not state that they agree to the Notice being cancelled or withdrawn. The Tenants did not state anything that could be construed as agreement to the Notice being cancelled or withdrawn. In fact, the Tenants indicated they would vacate in accordance with the Notice. The Tenants were not required to agree to the Notice being withdrawn or cancelled. It was open to the Tenants to decline to stay in the rental unit. This decision did not cancel the Notice.

I do not accept that the Tenants here agreed to the Notice being cancelled or withdrawn. I find the Notice remained in effect.

The Landlord testified that he rented the unit to a friend from October 15, 2019 to November 30, 2019. Therefore, the Landlord did not use the rental unit for the stated purpose of the Notice for at least six months after the effective date of the Notice. The effective date of the Notice was May 31, 2019. The Landlord was required to occupy the rental unit, or have a family member occupy the rental unit, until the end of November. The Landlord did not do so as the Landlord rented the unit to a friend October 15, 2019. Whether the Landlord's furniture was in the rental unit at the time or not is irrelevant. The Landlord was not permitted to re-rent the unit to a friend within six months of the effective date of the Notice. I find section 51(2) applies.

The remaining issue is whether extenuating circumstances apply. I do not find that they do. The Landlord has the onus to prove extenuating circumstances.

The Landlord testified that the extenuating circumstances were that he moved in with his father and realised his father required care and could not live on his own. I am not satisfied based on the evidence provided that this occurred.

I did not find the Landlord's testimony to be particularly compelling evidence as I found the Landlord changed his position on points during the hearing and provided testimony that seems to be contradictory to the rental website advertisement submitted.

Regardless, when a landlord is seeking to rely on extenuating circumstances under section 51(3) of the *Act*, I would expect to see some documentary evidence to support their position. Here, the Landlord did not submit documentary evidence to support that he moved in with his father once selling his house. The Landlord did not submit documentary evidence to support that his father has medical issues, requires care or cannot live on his own. The Landlord did not submit documentary evidence to support that he stayed at his father's residence to care for him. The Landlord did not submit witness statements, medical evidence or the type of documentary evidence that would show a person's residence such as mail or identification with an address on it. In the circumstances, I am not satisfied the Landlord has proven the extenuating circumstances claimed. Therefore, I am not satisfied section 51(3) of the *Act* applies.

Given the above, I find section 51(2)(b) of the *Act* applies and the Landlord must pay the Tenants 12 times the monthly rent of \$2,921.25 for a total of \$35,055.00. I am not satisfied section 51(3) of the *Act* applies such that the Landlord is excused from this obligation. The Tenants are awarded \$35,055.00.

I note that the amount awarded exceeds the usual limit for the RTB. As stated in Policy Guideline 27 at page three, I have jurisdiction to order this amount given it is determined by a formula in the *Act* and I have no authority to alter this formula or the amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$35,055.00. I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the BC Supreme 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 *Act*.

Dated: July 29, 2020

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Residential Tenancy Branch