



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FF

### Introduction

On April 14, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Tenant testified that the tenancy began in August 2011. The Landlord purchased the residential property and wanted vacant possession. The Landlord testified that the sale completed on December 21, 2019. The purchasing Landlord asked the original Landlord to serve the Tenant with a Two Month Notice to End Tenancy for Landlord's

Use of Property (“the Two Month Notice”). The effective date of the Two Month Notice is December 31, 2019. The Tenant accepted the Two Month Notice and moved out of the rental unit on November 30, 2019. The Tenant provided a copy of the tenancy agreement and a copy of the Two Month Notice.

Rent in the amount of \$1,572.00 was due to be paid to the Landlord by the first day of each month.

The Tenant testified that the reason cited for ending the tenancy within the Two Month Notice is:

*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.*

The Tenant provided testimony that the Landlord rented out the unit as a short-term Airbnb rental within six months of when the Tenant vacated. The Tenant testified that the Tenant found the advertisement on a local website. The Tenant testified that her boyfriend responded to the advertisement. The Tenant testified that the Landlord rented out the unit in April 2020. The Tenant provided a copy of advertisements showing two units available for short term rentals at the residential property. The contact person in the advertisement has the same first name as the Landlord. The tenant provided a copy of a text message dated April 9/ 10 regarding her boyfriends inquiry to rent the unit.

The Tenant testified that the Landlord owns another unit on the property that is also being rented out for short term rentals.

The Tenant submitted that four months after she moved out, she found an advertisement on a local website for the rental unit at a monthly rent of \$2,800.00. The Tenant provided a copy of the advertisement.

The Tenant is seeking compensation of \$18,864.00 which is twelve months of rent payable under the tenancy agreement.

The Tenant is also seeking the amount of \$300.00 for moving costs.

In reply, the Landlord’s counsel submitted that the purpose of the purchase was for the Landlord’s mother to come live in Canada. Counsel submitted that the Landlord intended for his mother to arrive sometime in January 2020. Counsel submitted that in

early January 2020 an airplane was shot down in Iran. Counsel submitted that due to this, flights were not available. In February 2020 the Landlord's mother booked a ticket for a flight in March 2020. The Landlord provided a copy of a flight information for March 13, 2020 from Iran to Vancouver BC. The document also provides information on a return flight for June 4, 2020. When the Landlord was asked the question why there was a return ticket, Landlord's counsel submitted that her intention was to live here permanently but a return ticket was to extend her visa and allowed her to return to Iran if she wanted to. The Landlord provided a copy of his mother's passport.

The Landlord provided a letter from his mother dated July 31, 2020 which indicates she cancelled her plane ticket due to Covid 19 and intends to move to Vancouver once her health conditions allow.

The Landlord's counsel submitted that because of the Covid 19 pandemic, the Landlord's mother was unable to come to Canada in March 2020.

The Landlord's counsel submitted that the unit was advertised for rent in April 2020 and that the Landlord is renting the unit out on Airbnb until his mother can arrive. He submitted that the Landlord rented the unit on Airbnb from April 30 to August 30, 2020 as a short-term rental.

The Landlords counsel submitted that the Landlord owning a second unit and renting it out on Airbnb is not relevant.

In response to the question of who was living in the rental unit from November 30, 2019 to April 2020, the Landlord testified that nobody was living in the unit. The Landlord testified that in the first month they were determining when his mother would be coming.

The Landlord's counsel submitted that the Landlord's mother was delayed from moving into the unit due to extenuating circumstances.

In reply, the Tenant testified that the Landlord's mother could have come into the country in January but did not intend to move here because her passport was set to expire in June 2020.

### Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline

provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

*“Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.*

*...*

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

Residential Tenancy Policy Guideline # 50 Compensation for Ending a Tenancy provides:

*A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.*

*It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.*

Section 51 (2) of the Act provides:

*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.*** ***[my emphasis]***

*(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.*

With respect to extenuating circumstances, the Guideline provides the following:

*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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

*Compensation for Breach of Section 51*

I find the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. The Landlord did not reside in the unit within a reasonable period after the effective date of the Two Month Notice and was renting the unit out in April 2020. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the notice.

The Landlord provided testimony in response to the question who was living in the rental unit after the Tenant moved out on November 30, 2019. He testified that in the first month they were determining when his mother would be coming, and counsel submitted that the Landlord intended for his mother to arrive sometime in January 2020. There is no documentary evidence before me showing that the Landlord's mother had tickets to travel in January 2020. I find that when the Two-Month Notice was issued on October 17, 2019 and up the point of time when the Tenant vacated, the Landlord had no concrete date for when his mother would be arriving to live in the unit. I note that the purchase of the property closed on December 21, 2020 and the effective date of the Notice is December 31, 2019.

I am also mindful that the ticket information shows a return flight to Iran in June 2020 and that her visa was set to expire in June 2020. The Act requires that the Landlord live in the unit for a duration of at least 6 months.

The letter from the Landlord's mother states she planned to travel to Vancouver on March 13, 2020 and that she intends to travel once her health conditions allow. There is no medical information before me to prove that the Landlord's mother could not fly due to medical reasons. The ticket information document dated January 23, 2020 indicates the flights were booked for March 13, 2020. While the Landlord's counsel stated that earlier flights from Iran were not possible due to an incident where a flight was shot down, there is insufficient documentary evidence before me to substantiate that there were no earlier flights out of Iran.

With respect to the Covid 19 pandemic, I accept that the pandemic made it unsafe or difficult to fly internationally, but not impossible. I accept that the Covid pandemic would be an extenuating circumstance; however, I find that it was not what prevented the Landlord from fulfilling the requirements of the legislation.

I find it is reasonable to take guidance from policy guideline #50 that provides a reasonable period for the Landlord to start living in the rental unit would be about 15 days. I find that the Landlord mother did not intend to reside in the unit until March 13, 2020 which is more than two months after the effective date of the Notice. I find that the Landlord did not use 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. (My emphasis).**

After considering the Landlord's submissions regarding flight delays and Covid 19, I find that there is insufficient evidence from the Landlord to establish that there are any extenuating circumstances present making it unjust for the Landlord to have to pay compensation to the Tenant.

### Moving Costs

I note that the Act does not specifically entitle a Tenant to claim compensation for moving costs when a Landlord has not complied with the obligations surrounding a Two Month Notice to End Tenancy. I find that the Tenant is being compensated for the Landlord's breach of the Act as provided above. The Tenant's claim for moving costs is dismissed.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$18,964.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice within a reasonable period after the effective date of the notice. The Landlord must pay the Tenant the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$18,964.00 for the breach of section 51 of the Act and the cost of the filing fee.

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: September 3, 2020

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Residential Tenancy Branch