



# Dispute Resolution Services

Page: 1

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 award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by counsel.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies I find that each party is duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Monthly rent for this periodic tenancy was \$1,760.00. The tenancy ended on April 30, 2020 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated February 24, 2020. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or their close family member, their spouse.

The named respondent LG is the landlord of the property, the other named respondent BZ is the landlord's adult child who resides out of the country and has acted as agent and interpreter for the landlord.

The parties agree that the landlord and their spouse have not occupied the rental unit and it has instead been placed on the market for sale. The tenants seek a monetary award in the equivalent of 12 month's rent of \$21,120.00 pursuant to section 51 of the Act.

The landlord submits that their inability to reside in the rental unit as indicated on the 2 Month Notice is due to a conflagration of extenuating circumstances. The landlord and their spouse suffer from a number of medical issues which have required hospitalization and medical intervention on a number of past instances.

The landlord provides in their written submissions:

[The landlord's spouse] a long-time patient of Type II Diabetes and atrial fibrillation, was unable to secure a cardiologist appointment in Vancouver due to COVID-19. This is of great significance as he has not been able to get his pacemaker (installed after an atrial fibrillation ablation surgery gone wrong in December 2019) checked, as the pandemic has disrupted the medical care system globally. As medical staff availability ramped up in China in May 2020, he made the difficult decision to return to China (undergoing another 14-day quarantine) to get the necessary inspection for his pacemaker, without which his natural heart rate would be in the low-20s

The landlord explained that while their spouse left the country to receive medical care, they remained in Canada, despite having no family support locally. The landlord writes that:

[The landlord is] a long time rheumatoid arthritis patient with some difficulty with day-to-day function due to joint pain, began suffering from anxiety attacks at the thought of living alone. In the previous year, she had been hospitalized due to anxiety attacks. In particular, she became increasingly concerned that should she suffer another anxiety attack, she would have not anyone nearby, and she does not speak English fluently

The landlord explained that due to their ongoing health concerns they chose to stay with a family friend who could assist in their day-to-day activities and provide them with necessary support. The landlord said that living in the rental unit alone was not a feasible option due to their medical needs. The landlord testified that as at the date of the hearing, their spouse remains out of the country and unable to travel. The landlord submitted into documentary evidence copies of travel documents, medical records and doctor's letters in support of their position.

The landlord submits that due to the ongoing medical issues of both they and their spouse, they believe it is not presently feasible to reside in the rental unit as originally intended. The landlord submits that they have chosen to sell the rental property as their medical condition makes it unlikely that they will be able to occupy the rental unit.

The tenants do not dispute the landlord's evidence but disagree with the characterization of the circumstances as being extenuating to excuse the landlord from accomplishing the goals set out in the initial notice to end tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the landlord or a close family member will occupy the rental unit. The tenant gave evidence that instead of being occupied the rental unit was placed on the market for rent. The tenant provided documentary evidence by way of the online listing showing the rental unit as available for rent and correspondence with the landlord.

I accept the evidence of the parties that the landlords failed to accomplish the stated purpose of the 2 Month Notice, to occupy the rental unit, and have instead listed the property for sale.

Section 51(3) provides that:

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

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating.

I find the evidence of the circumstances in this instance to be reasonably characterized as extenuating. The unforeseen shortage of medical resources and staff locally, the need to travel out of country for necessary medical intervention, the onset of existing medical issues requiring assistance and care and the landlord's health issues preventing them from residing independently all contributed to circumstances that prevented the landlord from occupying the rental unit. I find that these circumstances would make it unreasonable and unjust to order a monetary award as against the landlords.

Each of the individual medical circumstances cited by the landlord and supported in their documentary evidence would be a sufficient barrier to accomplishing their stated intention but when taken cumulatively I find that the circumstances have made the task of occupying and residing in the rental unit to be nigh impossible without serious health risks to the landlord and their spouse. I accept the undisputed evidence of the landlord that both the landlord and their spouse have medical issues that prevented them from residing in the rental unit. I find that the circumstances faced by the landlord to be properly characterized as extenuating.

Accordingly, I dismiss the tenants' application as I find that while the landlord did not accomplish their stated purpose for issuing the 2 Month Notice to End Tenancy, there are, in my opinion, extenuating circumstances that prevented the landlord.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: October 2, 2020

---

Residential Tenancy Branch