



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCT FFT

### Introduction

The tenant seeks \$33,600.00 in compensation pursuant to section 51(2) of the *Residential Tenancy Act* ("Act") and \$100.00 pursuant to section 72 of the Act.

The tenant filed an application for dispute resolution on July 6, 2020 and a hearing was held October 27, 2020. The tenant and the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

### Issues

1. Is the tenant entitled to the compensation as claimed?
2. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is referred to in this decision.

The tenancy began April 1, 2018 and ended on November 30, 2019. Monthly rent was \$2,800. A copy of the written tenancy agreement was submitted into evidence,

On September 28, 2019 the landlord served the tenant, in person, with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice"), and which indicated that the tenancy would end on November 30, 2019. The Notice indicated that the landlord was ending the tenancy because he or a close family member would be occupying the rental unit.

Within a few weeks of moving out, the tenant's friend told her that different cars were in the tenant's former parking spot. This suggested that the landlord had not moved in, but rather was renting out the rental unit on a short-term basis. This discovery occurred "approximately" 3-4 weeks after the tenant had vacated.

Shortly after, the tenant did some research and found out that the rental unit was being made available for short-term rentals online (e.g., [www.booking.com](http://www.booking.com)) and so, in an effort to confirm that this was the case, in fact rented the rental unit for February 15, 2020. Video was taken by the tenant and submitted into evidence, in which she argued the rental unit was not occupied by anyone. (For example, the refrigerator was empty.)

The landlord testified that he in fact moved some of his belongings and furniture into the rental unit the first of December 2019. He explained that lived there the entire month of December. However, his mother asked him to move back home with her to care for his grandmother, who had taken a few bad falls. The landlord moved back to his mother's residence in or about mid-January 2020. Unfortunately, he testified that he had to stay there longer than anticipated and did not move back into the rental unit until at the end of February 2020. He has, he stated, been living there ever since.

Regarding the short-term rental, he did not deny that this is what he did (at the suggestion of a friend's "great idea"), but then soon ran afoul of the strata's rules and prohibition on short-term rentals. Nonetheless, he testified that he simply intended to "rent it out here and there" until he was able to move back in. In total, he was not living in the rental unit for approximately five to six weeks.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Here, the tenant seeks compensation under section 51(2) of the Act which states:

- (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
  - (c) 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.

In this case, the landlord occupied the rental unit for a period of 4.5 months. He occupied the rental unit for the months of December 2019, half of January 2020, none of February 2020 (except for whatever days he occupied the rental unit at the end of that month), March, April, and May. In other words, he did not use the rental unit for the stated purpose of occupancy for at least – that is, for a minimum of – six months beginning within a reasonable period after the effective date of the Notice. In this case, I find that the reasonable period essentially began the week the landlord started to move his things into the rental unit.

Next, while the landlord did not explicitly raise the defence of extenuating circumstances, as per the Supreme Court of British Columbia's recent decision in *Furtado v. Maasanen*, 2020 BCSC 1340, the Court stated that

[. . .] if evidence of extenuating circumstances is presented, the adjudicator must consider it to determine whether those circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy.

The landlord gave evidence that he was asked to return home in order to provide care to his elderly grandmother, who had experienced a few bad falls. When the landlord moved into the rental unit in early December, he did not anticipate that he would, within the next several weeks, be needing to return home. That his grandmother required his care was unexpected and his care of her was required.

In summary, I find that the landlord's obligation to return home, for a period of about a month and a half to care for his grandmother, constitutes extenuating circumstances that prevented him from occupying the rental unit for a period of six months. Finally, it should be noted that the tenant did not object to or raise any issues in respect of the landlord's explanation as to why he had to temporarily not occupy the rental unit.

For these reasons, I find that there were extenuating circumstances that quash the landlord's obligations to pay compensation under section 51(2). Thus, taking into consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim. Accordingly, the tenant's application for compensation, including that of her claim for the filing fee, are hereby dismissed.

### Conclusion

I dismiss the tenant's application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 28, 2020

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Residential Tenancy Branch