



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 05, 2020 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Agent appeared at the hearing for the Tenants. The Landlord appeared at the hearing with J.K. who said she was a witness and advisor. I explained to the Landlord and J.K. that the Landlord was entitled to have someone appear to assist him but that if J.K. was also acting as a witness, I would put very little weight on any testimony meant to be corroborative of the Landlord’s testimony given J.K. would be present listening to the Landlord’s testimony. I told the Landlord and J.K. witnesses usually exit the hearing until required. I left it to the Landlord and J.K. to decide what they wanted to do. They decided J.K. would act as witness and J.K. exited the hearing until required.

I explained the hearing process to the parties who did not have questions when asked. The parties and J.K. provided affirmed testimony.

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, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted 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?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$6,120.00 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 13, 2020 (the “Notice”).

The Landlord testified that he purchased the rental unit in late February and took possession March 11, 2020. The Landlord testified that the Tenants were already living in the rental unit when he purchased it. He said he heard the Tenants had a verbal tenancy agreement with the previous owner.

The Agent testified as follows. There was no written tenancy agreement in this matter. The Tenants rented the unit in 2007. The original owner of the rental unit died, their son inherited it and then it was sold to the Landlord. The tenancy agreement was verbal. It was a month-to-month tenancy. Rent was \$510.00 due on the first day of each month. No security or pet damage deposits were paid.

The Landlord agreed rent was \$510.00 due on the first day of each month at the end of the tenancy.

The parties agreed the tenancy ended May 31, 2020.

The Notice was submitted. The parties agreed the Notice was served on the Tenants. The Landlord testified that the Notice was served around March 13, 2020. 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 indicates the child of the Landlord or Landlord’s spouse will occupy the rental unit. The effective date of the Notice is May 31, 2020.

The Agent made the following submissions. The Tenants moved out of the rental unit as requested. The Landlord’s son did not move into the rental unit as indicated on the Notice. The Landlord’s son left town. Six months later, the rental unit is still empty. There are two letters in evidence from neighbors stating nobody is living in the rental

unit. The rental unit was listed for sale in August and the listing mentions it could be rented for \$1,300.00 to \$1,500.00 per month. In the Landlord's statement, he says twice that he had no intention of anyone moving into the rental unit and acknowledges nobody is living in the rental unit. The repairs being done in the rental unit could have been done with the Tenants living there. The Notice was not issued in good faith. The Landlord should have issued a Four Month Notice.

In response to the written statement of the Landlord in evidence, the Agent submitted that there were no travel restrictions in relation to the Landlord travelling to the rental unit due to the pandemic at the relevant time. The Agent said the roads were not closed at the relevant time.

The Landlord testified as follows. He purchased the house. The house needed tons of work. He could not get a mortgage on the house until he got insurance. His insurance says the wiring has to be replaced within one year. He is following his insurance policy. The whole house requires re-wiring. The pandemic-related restrictions came in and he could not travel to the rental unit anymore. His daughter requires medical care and he no longer had nurses for his daughter. The bottom of the house has been gutted. There has been no power in the rental unit since he purchased it. It is taking a long time to work on the house because of the pandemic, his daughter's health and the snow. He lives two-and-a-half hours away from the rental unit and has to drive there to work on it.

The Landlord further testified as follows. His child did not move into the rental unit. His son was waiting around, got tired of the town and left town for a while. He never had the intent for anyone to live in the rental unit.

I asked the Landlord why he served the Notice if he had no intention of anyone living in the rental unit. The Landlord said he served the Notice so he could start renovating and tearing the house apart. I asked the Landlord how long he thought that was going to take. The Landlord said three or four months. The Landlord said it has taken longer because of the pandemic, his daughter's health and the snow.

The Landlord testified that the rental unit is unlivable, and nobody has moved into it. The Landlord acknowledged he listed the house for sale and said he does not remember when he did this.

The Landlord called J.K. as a witness. J.K. testified that she found a rental unit for the Tenants, but they did not accept it and did not contact her about it.

In reply, the Agent testified as follows. The Landlord knew about the condition of the rental unit when he issued the Notice and knew what he needed to do in relation to the house.

The Landlord provided written submissions which state in part:

- The house needs extensive repairs
- He has to replace all wiring, all plumbing, put in new insulation and new drywall, repair sagging floors and replace windows
- He was waiting for the Tenants “to move out so [he] can start with tearing the inside of the house apart, as it would not be liveable once started”
- [He] “had no intention of anyone living in the house when it was under major work”
- After the work was done and the house was livable again, he or his son were going to move in
- The house is empty with no one living in it

### 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 2A states at page two:

### **C. OCCUPYING THE RENTAL UNIT**

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

#### ***Vacant possession***

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Policy Guideline 50 states at page two:

### **Reasonable Period**

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.**

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays...

**This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.**

(emphasis added)

The Notice indicates it was issued for the child of the Landlord to occupy the rental unit. The Landlord acknowledged his child did not move into the rental unit. The Landlord acknowledged the rental unit is unlivable and nobody has moved into it. Therefore, I am satisfied the Landlord did not follow through with the stated purpose of the notice and has not followed through with the stated purpose of the Notice six months after the effective date of the Notice.

I am not satisfied extenuating circumstances prevented the Landlord from accomplishing the stated purpose of the Notice within a reasonable period after the

effective date of the Notice or using the rental unit for the stated purpose for at least six months.

The Landlord said he served the Notice so he could start renovating and tearing the house apart. The Landlord said he thought this would take three or four months. The Landlord said he never intended for anyone to live in the rental unit while the work was being done.

Based on the Landlord's testimony, and written statement, I find the Landlord intended to repair and renovate the rental unit for three to four months after the effective date of the Notice when he issued the Notice. Waiting three to four months to occupy the rental unit is not "within a reasonable period after the effective date of the Notice" as required by section 51 of the *Act*. Therefore, I find the Landlord never intended to occupy, or have his son occupy, the rental unit within a reasonable period after the effective date of the Notice. It is not extenuating circumstances that prevented the Landlord from following through with the stated purpose of the Notice, the Landlord did not intend to follow through with the stated purpose of the Notice within a reasonable period after the effective date of the Notice when he issued the Notice.

Given the above, I do not find it relevant that the work on the house has taken longer than the three or four months anticipated because the Landlord was not permitted to serve the Notice and then repair and renovate it over three to four months without occupying it.

In the circumstances, I am satisfied the Tenants are entitled to 12 times the monthly rent which I calculate to be \$6,120.00.

As the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$6,220.00 and I issue the Tenants a Monetary Order in this amount.

### Conclusion

The Tenants are entitled to \$6,220.00. 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 Provincial Court (Small Claims) 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: November 25, 2020

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Residential Tenancy Branch