



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on May 7, 2020, wherein the Tenant sought monetary compensation pursuant to sections 51(2), 67 and 72 of the *Residential Tenancy Act*.

The hearing of the Tenant's Application occurred by teleconference on September 8, 2020 and October 27, 2020. The Tenant and her witness, M.P., called into the first hearing, as did the named Landlords (K.D. and S.D.) and their legal counsel, S.G.

By Interim Decision dated September 8, 2020, and pursuant to *Rule 7.13* of the *Residential Tenancy Branch Rules of Procedure*, I added the Purchasers, E.C. and C.W. as Respondents to this proceeding. This Decision must be read in conjunction with my Interim Decision.

When the hearing reconvened on October 27, 2020, only the Tenant, her witness, M.P., and K.D. and S.D.'s legal counsel, S.G., called into the hearing. E.C. and C.W. did not call into the hearing. As such, I considered service of the Tenants' Application materials as it related to the Respondents, E.C. and C.W. The Tenant testified that she served the Purchasers, E.C. and C.W. as per my Interim Decision on September 2, 2020 by registered mail to the rental unit address. As the purchasers indicated they would be moving into the rental unit, I find service to the rental unit address to be sufficient for the purposes of section 89(1)(c) of the *Act*. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Purchasers, E.C. and C.W. were duly served as of September 7, 2020 and I proceeded with the hearing in their absence.

#### Preliminary Matter—Issues to be Decided

Pursuant to my Interim Decision, I amended the Application to add a claim for return of the Tenant's security deposit. However, when the hearing reconvened, the Tenant confirmed that she received her security deposit from the Landlords such that she no longer requested an Order for its return.

#### Issues to be Decided

1. Is the Tenant entitled to monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenant recover the filing fee?

#### Background and Evidence

The Tenant testified that she moved into the rental unit in August of 2001. She confirmed she paid rent of \$800.00 per month which was raised to \$1,300.00 at the time the tenancy ended.

The Tenant further testified that she moved out of the rental property on March 31, 2020 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use issued on January 26, 2020 (the "2 Month Notice"). The Tenant also received a letter from the purchasers indicating that they would be moving into the rental unit. A copy of the Notice as well as this letter was provided in evidence before me.

The Tenant stated that to her knowledge the purchasers did not move into the rental property, rather they rented it to a third party.

In support of this testimony, the Tenant stated that she met the new tenant, W. and their children. W. informed the Tenant that she moved into the property approximately a month after the Tenant vacated the rental unit. The Tenant further stated that she was informed that the new tenants pay approximately \$2,300.00 per month.

The Tenant called a witness, M.P., who testified that she lives next door to the rental unit. She confirmed they share a driveway and a fenced yard. She stated that she has lived there for four years and her husband has been there for 18 years.

M.P. confirmed that she knows the Tenant as they were neighbours. She stated that their friendship was a "family style relationship" where they shoveled each others' driveways, looked after their pets when they went away, etc.

M.P. testified that the Tenant moved out of the rental unit March 31, 2020 because the owners sold the home and the Purchasers were going to move in.

M.P. testified that she has not met the Purchasers, but she has met the new tenants. She confirmed the new tenants, W. and N., moved into the rental unit approximately one month later, in May of 2020. M.P. stated that shortly after they moved in M.P. spoke with W. and N. who confirmed that they were renting the rental unit and had moved from Alberta. M.P. stated that W. and N. stated that they are paying well over \$2,000.00 plus utilities. M.P. confirmed that at the time of the hearing, W. and N. continue to reside in the rental unit.

In response to the Tenant's claims, counsel for the Landlords stated that the Landlords were asked by the Purchasers, to serve the 2 Month Notice because the Purchasers stated that they were moving into the rental unit. In support the Purchasers provided the Landlords with the required letter requesting same.

The Landlords' counsel confirmed that the Landlords have not been back to the property since the property sold, nor have they had any contact with the Purchasers as all matters related to the sale was done through the realtors.

The Landlords' counsel confirmed that he attempted to obtain an email address for the Purchasers, however, the purchaser's Notary and Purchasers realtor declined to provide that information.

The Landlords' counsel submitted that the Landlords had not knowledge of the Purchasers putting the property up for rent after the sale completed.

## Analysis

Section 49(5) allows a landlord to end a tenancy in the event of the sale of the rental unit and reads as follows:

- 49 (5)A landlord may end a tenancy in respect of a rental unit if
- (a)the landlord enters into an agreement in good faith to sell the rental unit,
  - (b)all the conditions on which the sale depends have been satisfied, and
  - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

In order to determine whether the Tenants are entitled to compensation pursuant to section 51(2) I must determine whether the Landlords took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

In the case before me the stated purpose on the 2 Month Notice was that the property had sold, and the Purchasers asked for vacant possession as they intended to reside in the rental unit. This was confirmed by the letter provided by the Purchasers to the Landlords wherein the Purchases expressly asked in writing that the Landlords end the tenancy. A copy of this letter, dated January 16, 2020 was provided in evidence and was signed by both Purchasers; this letter provided in part as follows:

**WHEREAS:**

- A. The undersigned (the "Buyer(s)" and the Sellers(s) have entered into the Contract of Purchase and Sale dated January 7, 2020 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one of more of the spouse, children and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy*

*Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property

**NOW THEREFORE** in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm. On March 31<sup>st</sup>, 2020.

I accept the Tenant's testimony that she received the 2 Month Notice and the letter from the Purchasers and moved from the rental unit on this basis.

Based on counsel for the Landlords' submissions, and the January 16, 2020 letter, I find that the Purchasers asked the Landlords to issue the 2 Month Notice to the Tenants.

I further accept the Tenant's testimony, as well as her witness' testimony, and find the Purchasers did not move into the rented the rental unit after the sale completed, but rather rented the property out to third parties at an increased rent. I am persuaded by the testimony of the Tenant and her witness, M.P. who both personally spoke to the new tenants shortly after the sale completed and were informed that the property was rented, not occupied by the Purchases. I also accept M.P.'s testimony that she has personally observed the new tenants residing in the rental unit from approximately May 2020 to at least October 27, 2020, the final day of the hearing before me.

I therefore find that the Purchasers did not move into the rental unit and as such the rental unit was not used for the stated purpose. The Tenant is therefore entitled to monetary compensation pursuant to section 51(2) of the *Act*. As her rent was \$1,300.00 at the time the tenancy ended, she is entitled to the sum of \$15,600.00 representing 12 month's rent.

As the Purchasers failed to call into the hearing, I was not provided any evidence or submissions which might relieve the purchasers of the obligation to pay compensation pursuant to section 51(3).

The Tenant also sought compensation for two months of storage fees in the amount of as well as lost wages for four months. The compensation provided for tenants pursuant to section 51(2) is to include such unnecessary costs as moving costs, storage fees and other financial losses incurred when a tenancy could have continued had it not been for the 2 Month Notice. I therefore dismiss the Tenant's request for additional compensation.

As the Tenant has been successful in her Application, I grant her recover of the \$100.00 filing fee pursuant to section 72 of the *Act* for a total monetary award of **\$15,700.00**.

### Conclusion

The Tenants request for monetary compensation is granted in part. The Tenant's request for compensation pursuant to section 51(2) of the *Act* is granted as the Purchasers did not use the rental unit for the stated purpose; more specifically, they did not reside in the rental unit, rather they rented the unit out at a higher rate to third parties after the tenancy ended.

The Tenant's request for return of her security deposit is dismissed without leave as those funds have been returned.

The Tenant's request for compensation for storage costs and lost wages is dismissed as those losses are included in her compensation award pursuant to section 51(2).

The Tenant's request for recover of the filing fee is granted.

In furtherance of the above, the Tenant is granted a Monetary Order, pursuant to section 67 of the *Act*, in the amount of **\$15,700.00**, representing 12 months' rent at \$1,300.00 and recovery of the filing fee. The Tenant must serve this Order on the Purchasers and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: November 17, 2020

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Residential Tenancy Branch