



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, FFT**

### Introduction

This hearing dealt with the tenants' 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 landlord 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 tenant who attended the hearing confirmed they represented both named applicants. The landlord represented themselves with assistance.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials and based on the testimonies I find they have each been served 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 their filing fee from the landlord?

### 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.

The parties agree on the following facts. The rental unit is a suite in a multi-unit, strata operated building. This periodic tenancy began in November, 2014. Monthly rent at the end of the tenancy was \$1,325.00. The tenancy ended on August 31, 2019 in accordance with a Landlord's Notice to End Tenancy for Landlord's Use dated April 2, 2019. The reason provided on the notice for the tenancy to end is that the landlord or a close family member intends in good faith to occupy the rental unit. While the landlord used the standard 2 Month Notice Form the landlord provided an end of tenancy date on the notice of August 31, 2019, providing the tenant with over 4 months clear notice. The landlord provided the tenant with compensation in an amount equivalent to 1 Month's rent by not collecting rent for the month of August 2019.

The landlord moved into the rental unit on September 2019. Prior to issuing the Notice to End Tenancy and moving into the rental unit the landlord had lost their job in October 2015 and had been living off of their savings since that time. The rental building was the subject of sales negotiations from 2015 to 2018. During this time the strata corporation chose to not address maintenance issues until the negotiations were conclude. In September 2018 the prospective sale of the building fell through. The landlord submits that the rental building required major maintenance and work and they feared they would be subject to significant special levies.

The landlord submits that after the tenancy ended and the landlord took possession of the rental unit on September 1, 2019, they were advised by their financial advisor to sell the rental unit to prevent further depleting their savings. The landlord listed the rental unit for sale in October 2019 and the sale was completed by October 31, 2019 by which time the landlord had vacated the rental unit. The landlord confirms that they occupied the rental unit for a total of 2 months' time.

The landlord submits that their failure to use the rental unit for the stated purpose for at least 6 months' duration is due to extenuating circumstances. The landlord submits that their decision was based on advice from their financial advisor and realtor and made to prevent further monetary losses.

### 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 that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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,

The Landlord's Notice to End Tenancy for Landlord's Use of April 2, 2019 provides that the rental unit will be occupied by the landlord or a close family member. The parties agree that the tenancy ended on August 31, 2019 in accordance with the Notice. I do not find the length of the notice given to invalidate its effectiveness. While the landlord provided a greater length of time than required under the *Act*, at all times it is clear that the notice was issued as the landlord intended to end the tenancy and to use the rental unit themselves.

I accept the evidence of the parties that the landlord occupied the rental unit as of September 1, 2019 and moved out by October 31, 2019, a total of 2 months. Therefore, I find that the landlord has not used the rental unit for the stated purpose for at least 6 months duration.

Section 51(3) of the *Act* 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 would likely not be considered extenuating.

Based on the evidence I find the circumstances cited by the landlord to not meet the ordinary definition of extenuating circumstances. The landlord's lack of employment and income is a circumstance that was present from 2015, the potential sale of the rental building not culminating was clear from September 2018. I find that the landlord was aware or ought to have been aware of their own financial circumstances at the time they issued the Notice to End Tenancy.

I find that the landlord's decision to sell the rental unit arises from their own poor financial management and lack of foresight. The evidence before me is that there was no material change in the circumstances of the landlord between the period where they chose to issue the Notice to End Tenancy and choosing to subsequently sell the rental unit.

The landlord was given advice to sell the rental unit but it was ultimately their choice to follow the advice they received triggering the portions of the *Act* giving rise to the tenant's right to compensation. The landlord states in their written submissions that "it was the right time to sell and the responsible thing to do given my extenuating financial hardships".

I find that the circumstances before me are similar to those specifically cited in the Policy Guideline as examples of circumstances that are probably not extenuating. In the case at hand the landlord failed to adequately budget for residence in the rental unit and on the advice of financial advisors and realtors, opted to sell the rental unit instead of continuing to reside there. I find that it would be unreasonable and unjust to the tenants to allow the landlord to be excused from paying compensation in a situation arising from the landlord's own financial choices. I am unable to conclude that circumstances that were present prior to the issuance of the Notice to End Tenancy and that was known or ought to have been known constitutes extenuating circumstances that excuses the landlord from paying the tenant in accordance with the *Act*.

Furthermore, even if I were to find that limited financial means is extenuating circumstances that would excuse the landlord from their obligations under the Act, I find that there is insufficient evidence to support the landlord's position that such circumstances exist. The landlord's written submissions consist of irrelevant information about incidents that occurred during the tenancy and vague references to their financial situation with little documentary materials in support. The landlord provides little information regarding their assets, savings or liabilities. Documentary materials from financial institutions have been redacted by the landlord to conceal quantifiable financial information. I find little evidence to support the landlord's various statements about their financial position.

I find, based on the evidence of the parties, that the landlord did not use the rental unit for the purpose stated on the Notice to End Tenancy for at least 6 months. I find that no extenuating circumstances exist that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the Act. Consequently, I find that the tenants are entitled to a monetary award of \$15,900.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$16,000.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: December 15, 2020

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Residential Tenancy Branch