



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNETC, FFT

### Introduction

The tenants seek compensation in the amount of \$1,208.33 pursuant to section 51(1) of the *Residential Tenancy Act* ("Act"). In addition, they seek compensation in the amount of \$100.00 for the cost of the filing fee, pursuant to section 72 of the Act.

One of the tenants, E.D., and the landlord, attended the hearing on March 8, 2021, which was held by teleconference. No issues of service were raised by the parties.

### Issues to be Decided

1. Are the tenants entitled to compensation pursuant to section 51(1) of the Act?
2. Are the tenants entitled to compensation pursuant to section 72 of the Act?

### Background and Evidence

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

The tenant's application for dispute resolution included the following particulars of the claim (reproduced as written):

We were given our Notice to End Tenancy for Landlord's use to be out for November 30th. We provided more than 10 days notice that we were leaving before the eviction date. We moved out on November 1st. Our rent is 1250 a month. I deducted 1/30 (for one day) because we were there on the 1st of the month, which is roughly 41.77\$.

The tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Notice") by their former landlord on September 21, 2020. The former landlord sold the property in which the rental unit was situated and the reason for ending the tenancy, as stated in the Notice, was that the purchaser (that is, the landlord in the present dispute) would be intending in good faith to occupy the rental unit.

A copy of the Notice was submitted into evidence, along with a copy of the Contract of Purchase and Sale. It should be noted that the Notice only listed one landlord (purchaser) while the Contract of Purchase and Sale listed two purchasers, the landlord and his wife. It was the tenants' understanding that they only had one landlord after he took possession on October 1, 2020.

On October 15, 2020 at 1:46 PM the tenant J.B. sent the landlord a text message to let him know that they "have found a new apartment and will be moving out on November 1." The landlord responded that he was happy to hear this news.

The landlord testified that he did not expect to have to provide additional compensation to the tenants other than the return of their security deposit. He returned the deposit. The landlord also testified that it took him an additional three days to repair and clean the rental unit after the tenants vacated the rental unit. Finally, he explained that he was not aware of the requirement to compensate a tenant when a landlord ends a tenancy by way of a Two Month Notice to End Tenancy for Landlord's Use of Property.

### Analysis

The Notice in this dispute was issued under section 49(5) of the Act, which states that

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; [ . . . ]

The tenants do not dispute the validity of the Notice, and it appears to have been properly issued by the selling landlord at the instructions of the purchasing landlord.

Section 51(1) of the Act states that

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.

Finally, I must cite section 50 of the Act, which states as follows:

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
  - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

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.

In this application, then, the tenancy was ended in accordance with section 49 of the Act. There was no disputing that. The landlord was required under section 51(1) of the Act to compensate the tenants because the tenancy was ended under section 49 of the Act. The tenants ended the tenancy early under, and in compliance with, section 50(1) of the Act, and they did so by giving him fifteen days' notice. Finally, that they ended the tenancy by giving notice under section 50(1) of the Act does not cancel or otherwise affect the tenants' right to compensation under section 51 of the Act.

Taking into consideration all 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 tenants have met the onus of proving their claim for compensation in the amount of \$1,208.33 pursuant to section 51(1) of the Act.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the tenants were successful in their application, I grant their claim for the \$100.00 filing fee.

### Conclusion

I hereby grant the tenants' application and award them compensation as claimed.

I grant the tenants a monetary order in the amount of \$1,308.33, which must be served on the landlord. If the landlord fails to pay the tenants, then the tenants may file and enforce the order in the Provincial Court of British Columbia.

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

Dated: March 8, 2021

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Residential Tenancy Branch