Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1187701 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing originally convened on February 12, 2021 and was adjourned to May 10, 2021 due to time constraints. This decision should be read in conjunction with the February 12, 2021 Interim Decision. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Shareholder E.S. of the landlord family corporation (the "shareholder"), counsel for the landlord, the tenant and counsel for the tenant attended the first hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witness M.B. who provided affirmed testimony. The landlord called witness B.W. who provided affirmed testimony.

The shareholder, shareholder M.S., counsel for the landlord, the tenant and counsel for the tenant attended the second hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Parties Named

Counsel for the landlord submitted a concern that should this decision be made in favour of the tenant, the tenant would receive a windfall because the other people who resided in the subject rental property at the time the Two Month Notice to End Tenancy

for Landlord's Use of Property (the "Two Month Notice") was served, are not named in this application.

Counsel for the tenant submitted that the tenant is the only tenant named in the tenancy agreement and is the only person who has a claim against the landlord as the other people residing at the subject rental property were occupants, not tenants.

The tenancy agreement was entered into evidence. The tenant is the only person named as a tenant under the tenancy agreement. In the addendum to the tenancy agreement term 3 states:

> The tenant agrees that there will be only 3 persons in tenancy. They are:
> - [The tenant]
> - K.P.
> - D.K.

The tenant testified that the tenant was solely responsible for the rent and that the other occupants of the subject rental property paid the tenant their portion of rent and the tenant paid the landlord. The tenant testified that if the occupants did not pay rent, the tenant was responsible for providing the full rent payment to the landlord. The tenant testified that at the time the Two Month Notice was served, K.P. and D.K. no longer resided at the subject rental property and that two new occupants were living at the subject rental property.

Residential Tenancy Branch Policy Guideline # 13 states:

> B. TENANTS AND CO-TENANTS
> A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay $1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due….

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant. Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

I find that the tenant was the sole tenant of the subject rental property and that the other persons residing at the property were occupants as defined by Policy Guideline #13. I make this finding based on the tenancy agreement which only lists the tenant as a tenant. I note that only the tenant signed the tenancy agreement and none of the occupants signed either the tenancy agreement or the addendum.

The finding that the other people residing at the property are occupants and not co-tenants is supported by the fact that the occupants changed throughout the course of this tenancy, but a new tenancy agreement was not signed. I accept the tenant's testimony that the tenant was solely responsible for rent even in the other occupants did not pay their portion. The responsibility of the tenant to pay all the rent also supports the finding that the tenant was the only tenant and the others residing at the subject rental

property were occupants. As the tenant is the only tenant of this tenancy agreement, I find that should the tenant be successful in this claim, the tenant would not receive a "windfall" as the other occupants are not entitled to make a claim against the landlord.

Issues

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to a recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2015 and ended on November 30, 2019. Monthly rent in the amount of $1,550.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord purchased the property from the original landlord and took possession of it on September 30, 2019. The property is a house with two separate rental suites. The tenant resided in the lower suite.

Both parties agree that the shareholder personally served the tenant with the Two Month Notice on September 30, 2019. The Two Month Notice was entered into evidence and has an effective date of November 30, 2019. The Two Month Notice states the following reason for ending this tenancy:

- The landlord 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.

Both parties agree that a person owning voting shares in the corporation, or a close family member of that person, has not moved into the subject rental property. The tenant is seeking a monetary award equivalent to 12 months' rent pursuant to section

51(2) of the *Act.* Counsel for the landlord submitted that the landlord was unable to comply with the reasons to end tenancy set out in the Two Month Notice due to extenuating circumstances as set out in section 51(3) of the *Act*.

Both parties agree that on September 30, 2019 the tenant in the upper suite received a Two Month Notice to End Tenancy for Landlord's Use of Property identical to the Two Month Notice received by the tenant. The upper tenant made a Residential Tenancy Branch claim against the landlord for a monetary award equivalent to 12 months' rent pursuant to section 51(2) of the *Act* and was successful. The decision for the above file was entered into evidence and the file number is located on the cover page of this decision.

The tenant testified that at the time he was served the Two Month Notice the subject rental property was in obvious disrepair as evidenced by:

- moss on the roof,
- damage to south side of the roof,
- dirty exterior,
- water damage to west side of bedroom-plastic pinned to the ceiling to prevent water from dripping on occupants
- west side of bedroom showed visible water damage and had a piece of plastic pinned to the ceiling to prevent water from dripping,
- the den showed discoloration on the ceiling from water intrusion,
- the bathroom ceiling had two holes and was soft to the touch,
- one of the holes in the bathroom ceiling was covered by plastic to prevent water from dripping,
- the bathroom wall showed obvious water damage and mushrooms grew in that area,
- the bathroom tiles were falling off from water damage,
- a light in the bathroom stopped working after water intrusion,
- the kitchen tap leaked when in use,
- the kitchen counter was bubbling and buckling from water damage from the leaking tap; and
- an exposed copper pipe lead from the furnace room to an outside laundry shed, the pipes froze in the winter.

The tenant testified that he informed the shareholder of the above issues when he was served with the Two Month Notice on September 30, 2019.

The tenant testified that the above issues were not repaired before the subject rental property was sold to the landlord. The tenant testified that the plastic attached to the bathroom ceiling was installed in 2018 and was not removed during his tenancy.

The tenant testified that the leaking kitchen faucet did not interfere with his ability to use the kitchen.

The tenant testified that he pressed the previous landlord for years to get the required repairs completed at the subject rental property but had not involved the Residential Tenancy Branch because he feared that the landlord would evict him if he did so. The tenant testified that his fears were justified because in August of 2019 he told the previous landlord that if the repairs were not made, he would file an application for repairs with the Residential Tenancy Branch. The tenant testified that shortly after this conversation, the previous landlord sold the subject rental property and the landlord served the tenant with the Two Month Notice.

Witness M.B. testified that he resided in the upper suite of the subject rental property. Witness M.B. testified that he was evicted from the subject rental property after receiving a Two Month Notice for Landlord's Use of Property on September 30, 2019.

Witness M.B. testified to the following condition of the subject rental property at the time the Two Month Notice for Landlord's Use of Property was served:

- the outside was not completely horrible,
- patches on the roof were visible and squirrels lived in the roof,
- the siding of the subject rental property was dirty, and the home looked like a fixer upper,
- obvious water damage to the back stairs,
- water leaked into the spare bedroom causing mold to grow on the carpet in the closet,
- the property was in obvious general disrepair.

Witness M.B. testified that he alerted the shareholder to the above issues when he was served with the Two Month Notice for Landlord's Use of Property on September 30, 2019. Witness M.B. testified that he had been invited into the tenant's property and saw a tarp attached to the bathroom ceiling and mushrooms growing from the bathroom wall.

Witness M.B. testified that he did not use the back stair as an entrance for the upper suite but used it to store tools. Witness M.B. testified that he first noticed the mold in the spare room closet on a rainy day in August 2019.

It is uncontested that repair work to the roof occurred shortly after the landlord took possession of the subject rental property.

Witness B.W. testified that he was the landlord's realtor and assisted the landlord in the purchase of the subject rental property. Witness B.W. testified that the shareholder was looking for a property that could be used by his children, one child per suite, while they attended a local university. Witness B.W. testified that the landlord put offers on several other properties but was not successful. Witness B.W. testified that the market at the time of purchase was extremely hot and that in order to secure a property, the landlord made an offer to purchase without subjects. Witness B.W. testified that he viewed the property on two occasions, the first on September 9, 2019 during an open house and the second, on September 30, 2019, when he witnessed the shareholder serve the tenant with the Notice.

Witness B.W. testified that it was his job to look for risks and concerns with the property on behalf of the shareholder. Witness B.W. testified that the subject rental property was built around 1910 and was in average condition. Witness B.W. testified that the property was not in exceptional repair or disrepair. Witness B.W. testified that the listing itself made the shareholder aware that the roof needed repair. Witness B.W. testified that to eliminate the risk of losing the property the landlord put in an offer with no subjects and agreed to take on the repair of the roof.

Witness B.W. testified that there were no obvious outrageous repairs that would have prevented the shareholder's children from moving in. Witness B.W. testified that he only became aware of "the dark side of the property" when the tenant informed him and the shareholder of issues with the property on September 30, 2019. Witness B.W. testified that he and the shareholder knew the source of the problems [the roof] and that it wouldn't take a lot to repair.

Witness B.W. testified that during the open house he did not smell mould but did smell a dampness that was common in houses of this age. Witness B.W. testified that during the September 9, 2019 showing he did not see water discolouration that was a glaring concern for risk management. Witness B.W. testified that he was not aware of any tarps at the subject rental property. Witness B.W. testified that he did not go on the back stairs because they were full of storage.

Witness B.W. testified that there were about 20 people around the subject rental property during the open house on September 9, 2019 and that there were groups of 2-3 people in the upper unit and lower units at a time.

Shareholder M.S. testified that she is the spouse of the shareholder. Shareholder M.S. testified that she attended at the subject rental property for the open house and did not notice any damage in the living room, bedrooms, bathroom or kitchen. Shareholder M.S. testified that her family is very important to her and that she was looking for a home for her children to live in and that the subject rental property was perfect for her son to live in because it is a short commute to her son's university. Shareholder M.S. testified that she believed the subject rental property only required a few cosmetic upgrades before her son could move in.

The shareholder testified that his impression of the tenant when he met the tenant on September 30, 2019 and November 30, 2019 was that the tenant was articulate, well educated and well dressed.

The shareholder testified that when he met the tenant on September 30, 2019, he had a five-minute conversation with the tenant about the shareholder's plans for the property. The shareholder testified that he met the tenant a second time when the shareholder attended at the subject rental property on November 30, 2019 to pick up the keys from the tenant at the end of the tenancy. The shareholder testified that this is when the tenant told him about all the problems with the property.

The shareholder testified that on November 30, 2019 the tenant advised him that with a little work the subject rental property should be ok. The shareholder testified that the tenant then led him through the subject rental property and told him about the leak in the bathroom from the upper unit and showed him the plastic sheeting pinned to the ceiling to prevent water from dripping on the people using the bathroom. The shareholder testified that the tenant informed him that the leak only occurred when the bathroom in the upper unit was used. The shareholder testified that he returned the tenant's security deposit to the tenant as the tenant was not responsible for the leak from the upper tenant's bathroom.

The shareholder testified that he planned to complete all the repair work himself with the help of a friend who is a handyman. The shareholder testified that the plan was to find the source of the bathroom leak and try to fix it. The shareholder testified that he was not able to fix the leak because the cause of the leak was old rusted pipes and that the plumping in the bathrooms required replacement. The shareholder testified that all of

the cabinets, the vanity and the bathtub in the bathroom had to be removed and that a professional plumber had to be called to complete the work.

The shareholder testified that in order for the pipes to be replaced, the bathroom wall had to be re-framed which required permits. The landlord testified that the extent of the damage was not evident until after the vanity and cabinets were removed. The shareholder testified that to do a normal bathroom renovation, like the one he planned, no permits were required. The shareholder testified that because all of the pipes needed to be replaced, a wall reframed and new electrical to be installed, permits were required. The shareholder testified that it took a considerable amount of time to get the required permits which process was slowed down by COVID 19. At the time of the second hearing the shareholder testified that they have not yet received an occupancy permit for the subject rental property but are hopeful to receive it soon.

Closing Arguments- Counsel for the Tenant

Counsel for the tenant made the following written submissions:

> This case will ultimately turn on whether or not the Landlord can rely upon the state of the Unit as of November 30th, 2019 (when the Tenant's tenancy was terminated) as an extenuating circumstance, pursuant to section 51(3) of the Act.
>
> This case has identical facts to [the upper tenant's arbitration], which was determined in the [upper] tenant's favour. To be clear, those facts include: - The same building; - The same landlord; and - Identical notices to end tenancy, including dates of service, bases for the terminations of tenancy, and effective dates of the notices to end tenancy.
>
> It is admitted that arbitrators are not bound by other Residential Tenancy Branch decisions and that they have discretion over the qualification of an extenuating circumstance pursuant to section 51(3) of the Act. However, the Tenant argues that the facts of this case are identical to [the upper tenant's file] and, therefore, that this file should follow that decision. The Tenant argues that, irrespective of discretion, identical facts must produce identical results…
>
> The Landlord indicated in their Notice to End Tenancy that they intended to move in a close family member. The Act and its corresponding Guidelines therefore

obligated the Landlord to move in a close family member within a reasonable period of time.

Residential Tenancy Guideline 50 explicitly examines the example of a landlord indicating on a Notice to End Tenancy to move in a close family member, and subsequently undertaking renovations instead. It expressly forbids this conduct and entitles a tenant to compensation when such a situation is presented. That is exactly the present situation.

To the extent that it seems apparent that the Landlord failed to move in a close family member within a reasonable period of time of the Tenant's eviction, as required by section 49 of the Act, the onus shifts to the Landlord to demonstrate that extenuating circumstances prevented them from doing so. Absent such a circumstance, the Tenant is entitled to compensation in the amount of $18,600.

Counsel for the tenant made the following oral submissions. The landlord has not proved that extenuating circumstances prevented the landlord from moving a close family member into the subject rental property within a reasonable period of time. The landlord agreed that he only viewed the subject rental property on one occasion, at a busy open house, before the landlord served the Two Month Notice. The landlord was aware of the water damage in the unit and chose not to get an inspection of the subject rental property before serving the tenant with the Two Month Notice.

The evidence of the shareholder, shareholder M.S. and the realtor regarding the extent of the visible water damage in the bathroom differs from the testimony of the tenant and witness M.B. The evidence of the tenant and witness M.B. should be preferred because they lived at the subject rental property and had considerably more time to view it than did the shareholder, shareholder M.S. and the realtor. The law is clear, given the extensive repairs required at the subject rental property the landlord should have served the tenants with a Four Month Notice for Demolition, Renovation, Repair or Conversion of a Rental Until (a "Four Month Notice") and that permits are required before such a notice is served. No permits were obtained by the landlord prior to the Two Month Notice being served on the tenant.

The Residential Tenancy Branch Guidelines clearly state the types of circumstances that are considered extenuating, which include the subject rental property burning down or the death of the person who was supposed to move in. The facts of this case do not meet that high threshold. The landlord made an assumption of the condition of the property based on a single open house and that assumption was not born out. The

landlord failed to exercise due diligence in failing to have the property inspected by a professional to determine the condition of the property before the Two Month Notice was served on the tenant. The negligence of the landlord in not obtaining an inspection does not exonerate the landlord from its obligation to pay the tenant a monetary award equivalent to 12 months' rent as set out in section 51(2) of the *Act.*

Closing Arguments- Counsel for the Landlord

Counsel for the landlord made the following written submissions:

> In this instance, extenuating circumstances clearly have prevented and continue to prevent the [shareholder's] children from occupying the property.
>
> The landlord acted reasonably in purchasing the property without first obtaining a professional inspection. Based on the [shareholder's] visual inspection the landlord honestly and reasonably thought that the minor repairs and cosmetic improvement it contemplated could be completed by early January and would be sufficient to make both units pleasantly and safely habitable for their children.
>
> It was only after the initially contemplated work was begun that it became apparent that a great deal of additional work, much of which needed City permits, would be needed. The landlord has proceeded with all due diligence with this, but the property has not yet received an occupancy certificate. When it does, the [shareholder's] son will occupy the lower suite that had been tenanted by [the tenant]. The only difference is that it is taking place after expenditures in time and funds that the landlord did not expect when it gave the two month notice.
>
> This is emphatically not a 'renoviction' case. The extenuating circumstances faced by the landlord are unique to this building, and have not resulted in the landlord renovating the property and re-renting it at a higher rent to a new post-renovation tenant, the ill which the policy guidelines are clearly intended to address.

Counsel for the landlord made the following oral submissions. There is nothing in the evidence to indicate that the landlord was not acting in good faith as required by section 49 of the *Act* or that the landlord had an ulterior motive in ending the tenancy on November 30, 2019. The shareholders had an honest intention to purchase the subject rental property for their son to live in and only the unexpected extensive renovations,

which were beyond the landlord's control, prevented the shareholders' son from moving in. The shareholder was only notified on November 30, 2019 of the small leak in the bathroom and it was not reasonable for the landlord to have known that the small bathroom leak would have required such extensive renovations.

In terms of credibility, it stretches credulity that the tenant who is articulate and well put together, would live in a home with an umbrella to prevent sewer water from dripping on him while in the bathroom. If the property was in such disrepair you would think there would be photographic evidence. Common sense dictates that the house was presentable when shown.

The re-pluming of the bathroom was not in anyone's contemplation when the Two Month Notice was served. Reframing and electrical work in addition to the plumbing work required City permits which were further slowed down by COVID 19. The necessity for permits meant that this property has been vacant for a considerable length of time.

When the shareholder exchanged keys and security deposit with the tenant, the shareholder expected his kids to move in by early January 2020. However, for reasons outside the landlord's control and not arising out of negligence, the shareholder's son could not move into the subject rental property.

Not getting an inspection was not negligent. Both the shareholder and the realtor testified that in the hot real estate market, purchasers cannot make offers with subjects if they wish to be successful. The upper tenant decision was made in error and that in accordance with Residential Tenancy Policy Guidelines 2A and 50, the Two Month Notice was given in good faith.

Counsel for the Tenant's Responding Arguments

Counsel for the tenant made the following submissions. It is common practice in a hot real estate market to make an offer without subjects; however, this does not let the landlord off the hook as the landlord could have done an inspection after the sale and before the Two Month Notice was served on the tenant.

The assertion that the tenant was dishonest about the condition of the subject rental property and in particular the bathroom does not accord with the evidence about the significant damage that both parties agree was found in the bathroom.

The good faith of the landlord is not in question, what is in question is whether the landlord was negligent in not having an inspection completed. The landlord was negligent – the property was in obvious disrepair and the landlords did not investigate the seriousness of the issues and ended the tenancy pre-maturely.

Analysis

I note that I have no authority under the *Act* to overturn another decision of the Residential Tenancy Branch and that I will make no comment on the outcome of the upper tenant's arbitration. This decision is based on the documents entered into evidence and the testimony and submissions of counsel, the parties, and the witnesses heard on February 12, 2021 and May 10, 2021.

Based on the testimony of both parties I find that the tenant was personally served with the Two Month Notice on September 30, 2019 in accordance with section 88 of the *Act.*

Section 49(4) of the *Act* states:

> A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

Counsel for the landlord made submissions regarding the good faith intention of the landlord when the Two Month Notice was issued. I find that good faith as outlined in Residential Tenancy Policy Guideline 2A is not determinative on a section 51 claim.

Residential Tenancy Policy Guideline 2A states in part:

> In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.
>
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy

agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I find that good faith usually comes into play if a tenant is seeking to cancel a Two Month Notice, which is not the case in this dispute. This dispute is centered around section 51 of the *Act* which does not contain a “good faith requirement”. Section 51 of the *Act* states:

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.

Residential Tenancy Policy Guideline #50 states:

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….

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

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….

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Both parties agree that at the time of the second hearing, May 10, 2021, a person owning voting shares in the landlord corporation or a close family member of that person, has not did not moved into the subject rental property. The tenant moved out in accordance with the Two Month Notice approximately 18 months ago. I find that the rental unit was not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I also find that had the shareholders' children moved into the subject rental property in early January 2020, over one month after the tenant was evicted, this would not have been a reasonable period as defined by Residential Tenancy Branch Policy Guideline #50. The reason the shareholders' children could not move in sooner, was because of the renovations required, thus, the appropriate notice to end tenancy would have been a Four Month Notice.

Pursuant to section 51(2)(b) and section 51(3) of the Act I find that unless the landlord can prove that extenuating circumstances prevented the landlord from completing the reasons for the eviction set out in the Notice, the tenant is entitled to an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Extenuating Circumstances

I accept the landlord's submissions that at the time the landlord purchased the subject rental property, the landlord's offer to purchase the property would likely have been rejected if it contained an offer subject to an inspection. I do not accept that the state of the market had any impact on the landlord's responsibility to ensure that the tenant was served with the correct notice to end tenancy.

The tenant, witness M.B. and witness B.W. all testified that the tenant informed the landlord about the condition of the property on September 30, 2019 when the shareholder served the tenant with the Two Month Notice. The shareholder testified that the testified that the tenant did not advise him of the issues with the property until November 30, 2019 when the parties did a walk through. I find that the testimony of the shareholder does not accord with the testimony of the tenant, witness M.B. and the landlord's witness B.W. I find that the tenant informed the landlord of the repair issues at the subject rental property on September 30, 2019 and that this conversation continued on November 30, 2019 when the parties did a walk through.

The tenant and witness M.B. both testified that the bathroom was in disrepair with plastic pinned to the ceiling to prevent water from the upstairs bathroom from dripping on the tenant and occupants. The tenant testified that this plastic was not removed while the tenant resided at the property or for the open house. Witness B.W. testified that there was not any plastic pinned to the bathroom roof during the open house. Shareholder M.S. testified that she did not see plastic on the ceiling during the open house. The shareholder testified that the tenant showed him the plastic pinned to the bathroom ceiling on November 30, 2019.

Where the testimony of the tenant regarding the condition of the subject rental property differs from the testimony of the shareholders and witness B.W., I prefer the testimony of the tenant as the tenant lived at the subject rental property for many years and the shareholders and witness B.W. attended at the property on limited occasions for limited periods of time. I find that the tenant would therefore have a more comprehensive knowledge of the property than the shareholders and witness B.W. I also note that the shareholder agreed that the plastic was on the ceiling in November 30, 2019. I find it unlikely given the testimony from the tenant and witness M.B. that the plastic was added after the open house and that the water damage to the ceiling was not evident at the time of the open house.

I do not accept counsel for the landlord's submissions that a well-dressed articulate person would not live in a property requiring serious repair. The tenant testified that he had been seeking repairs from the previous landlord but did not pursue the matter with the Residential Tenancy Branch for fear of eviction. The subject rental city has limited rental stock and many people, including articulate and inarticulate people alike find themselves in unideal living situations. I also note that the shareholder confirmed that there was plastic pinned to the bathroom ceiling on November 30, 2019. I find it unlikely that the plastic would have been pinned to the ceiling if their was not a leak.

Based on the shareholder's testimony and the testimony of the tenant, I find that on September 30, 2019 the shareholder was aware that: the roof of the subject rental property required repair, there was a leak in the bathroom ceiling, the property was old, and the tenant had significant concerns regarding water intrusion. I find that given the known issues, the landlord knew or ought to have known that further significant repairs might be required that could impact the ability of the shareholders' son from moving into the subject rental property. I find that it would have been reasonable for the landlord to have had an inspection completed to understand the scope and nature of all the repairs required before a notice to end tenancy was served on the tenant. Such an inspection could easily have been undertaken after the property was purchased. I find that the necessity of a no subjects offer has no impact on the landlord's duty to serve the tenant with the appropriate notice to end tenancy.

I find that the landlord did not exercise the required due diligence in determining if the tenant should receive a Four Month Notice or the Two Month Notice because after the property was purchased, the landlord did not have an inspection completed.

I find that the extensive nature of the required repairs to the subject rental property does not constitute an extenuating circumstance under section 51(3) of the *Act* as the landlord failed to take reasonable steps to understand the extent of the renovations required to make the property habitable for the shareholder's children. I find that given the obvious water damage throughout the unit, it was unreasonable for the landlord not to have made further inquiries into the renovations required at the property prior to service of the Two Month Notice.

Pursuant to section 51(2) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to 12 months' rent, in the amount of $18,600.00.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant in the amount of $18,700.00.

The tenant is provided with this Order in the above terms and 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: May 13, 2021

Residential Tenancy Branch