



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On December 20, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and agent for the Landlord (“the Landlord”) attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The Tenant testified that on January 2, 2020 he served a copy of his documentary evidence (21 pages) to the Landlord using registered mail sent to the service address provided to him by the Landlord Mr. L.C. The Tenant provided a copy of the registered mail receipt containing the Landlord’s address. Mr. L.C. confirmed that address where the documents were sent is his business address and he stated that his receptionist did not give him any documents.

I find that the Tenant provided evidence that the documents were served in accordance with sections 89 and 90 of the Act. The Landlord is deemed to have received the Tenant’s evidence, and the evidence was admitted and was considered.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenant's entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in April 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. The Landlord and Tenant testified that at the end of the tenancy, rent in the amount of \$3,585.00 was due to be paid to the Landlord by the first day of each month. The tenancy ended on August 31, 2020 after the Tenants received a notice to end tenancy from the Landlord.

The Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 16, 2020 ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy cited within the Two Month Notice is:

*The rental unit will be occupied by the Landlord or the Landlords close family member. The child of the Landlord or the Landlords spouse.*

Money Owed or Compensation for Damage or Loss Under the Act

The Tenants are seeking compensation in the amount of \$43,020.00 which is twelve months of rent paid under the tenancy agreement.

The Tenant stated that the Landlord or a close family member did not move into the rental unit and occupy the property.

The Tenant stated that a couple of days after he moved out of the unit, a for sale sign was erected on the residential property. The Tenant testified that he attended the residential property on December 6, 2020 and nobody had moved into the home. The Tenant testified that there was mail and newspapers piled up by the front door. The Tenant provided photographs of the for-sale sign on the property and mail and newspapers located by the front door.

The Tenant testified that he saw that the home was listed for sale on the internet but does not know if the home was actually sold.

In reply, the Landlords agent, Mr. L.C. testified that because of the pandemic there was limited flights leaving China which affected the Landlord's ability to travel. He testified that nobody occupied the residential property prior to December 8, 2020.

Mr. L.C. testified that the owners granddaughter began living in the residential property starting December 8, 2020. When Mr. L.C. was asked for more information on this, he stated that the granddaughter is 16 or 17 years old and had already been living in a boarding school in the city. When asked to clarify whether the granddaughter was living in the residential property alone, the Landlord stated that her mother had arrived from China and was also living in the home.

Mr. L.C. referred to a photograph showing that people were hired to maintain the residential property and also photographs showing furniture in the home.

The Landlord also provided a flight itinerary document issued November 28, 2020 in the name of the homeowner and another person for a flight from China to Vancouver on December 7, 2020.

Mr. L.C. testified that the rental unit was put up for sale prior to the end of the tenancy. The Landlord testified that a sign was not placed on the lawn of the property during the tenancy. He testified that the home was never sold.

Mr. L.C. was asked if there are other circumstances that he wants me to consider and he replied "no".

The Tenant replied that he has no idea if the owner's granddaughter or daughter moved into the home on December 8, 2020. The Tenant stated that the Landlord had the ability to fly anytime and that nobody was living in the home until December 2020 which is not good faith for ending the tenancy.

#### Fuel Oil

The Tenant testified that the Tenant left heating oil in the tank and wants compensation of \$50.00 from the Landlord. The Tenant estimates that the remaining oil was worth \$50.00.

In reply, the Landlord stated that he is in agreement to pay the Tenant the amount claimed of \$50.00.

### Cleaning Costs

The Tenant testified that when he moved into the rental unit it was not clean and when he raised the issue with the property management company, he was told he could have the rental unit cleaned and send the bill to the Landlord for repayment. The Tenant did not provide any documentary evidence regarding this offer or agreement made with the property management company or the Landlord.

The Tenant testified that he did not arrange for the rental unit to be cleaned and did not send a bill or get any compensation from the property manager or Landlord. The Tenant now wants to receive a credit for what it would have cost if he had hired cleaners at the start of the tenancy. The Tenant stated that he paid \$1,000.00 to have the rental unit cleaned at the end of the tenancy and he wants to recover \$500.00 of that amount from the Landlord.

In reply, the Landlord stated that the Tenants' claim is not reasonable, and they should not be able to receive a credit for something that may have occurred in 2018.

### Analysis

Section 51 (2) of the Act provides:

*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.*

The Two Month Notice contains the following information on page 4:

### **YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION**

*After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.*

*You must apply to the Residential Tenancy Branch to be awarded this compensation. Your landlord may be excused from paying this amount if there were extenuating circumstances that prevented your landlord from accomplishing the purpose for ending your tenancy or using the rental unit for that purpose for at least 6 months.*

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy provides the following information with respect to extenuating circumstances:

#### **Accomplishing the Purpose/Using the Rental Unit**

*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.*

Policy Guideline #50 also provides direction on what is a reasonable period for a landlord to occupy a residential unit. The Guideline provides the following:

*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.*

With respect extenuating circumstances the policy guideline provides the following:

*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. Some examples where it would be unreasonable and unjust for a landlord to pay compensation 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.*

Based on all of the above, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

#### Compensation for Breach of Section 51

I find that the Tenants accepted the Two Month Notice from the Landlord and moved out of the rental unit on August 31, 2020.

I accept the Landlord's testimony that the Landlord's granddaughter and her mother occupied the rental unit as of December 8, 2020. I find that based on the testimony before me, the mother is the daughter of the Landlord and therefore the rental unit was occupied by the child of the Landlord or the Landlord's spouse.

I have considered section 51(2) of the Act which provides that the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, 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.

The Act 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 within a reasonable period to accomplish the stated purpose.

I note that the information regarding the steps that must be taken within a reasonable period of time is contained on page four of a Two Month Notice.

I have also considered the policy guideline regarding a reasonable period and accept the guidance that a reasonable period of time for the Landlord to occupy the rental unit would be about 15 days.

I find that the Tenant vacated the unit on August 31, 2020 and the unit was not occupied by the Landlord until December 8, 2020. The Landlord did not occupy the rental unit until 98 days after the effective date of the Two Month Notice. I find that 98 days is more than six times what is suggested as a reasonable period. I find that the Landlord did not take steps to occupy the rental unit within a reasonable period of time.

In accordance with section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation. I find that circumstances such as fire or death, where it would be unreasonable and unjust for a landlord to pay compensation are serious and/ or significant circumstances. I find that the circumstances that need to be present to excuse a landlord from paying compensation need to be significant.

I have considered the Landlords submission that flights from China into Vancouver were affected by the covid pandemic. The Landlord did not provide any documentary evidence that flights from China were restricted or that the Landlord was unable to book a flight into Vancouver prior to December 7, 2020.

In accordance with section 51(3) of the Act it is my finding that the circumstances submitted by the Landlord do not meet the threshold of an extenuating circumstance in accordance with the intention of the legislation and the policy guideline.

The legislation does not permit me authority to vary the amount of compensation for a breach of section 51(2)(a) of the Act. I find that the Landlord owes the Tenants

\$43,020.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

### Fuel Oil

The Landlords agent agreed to pay the Tenant the amount of \$50.00 for fuel oil. I grant the Tenant \$50.00.

### Cleaning Costs

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists.
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement.
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant's claim for \$500.00 towards cleaning costs is dismissed. I find that the Tenant provided insufficient evidence that there was an agreement reached with the Landlord that he could be compensated \$500.00 for having the rental unit cleaned at the start of the tenancy.

In addition, the Tenant never had the cleaning work performed and there is insufficient evidence that he suffered a loss and can provide proof of his actual loss.

### Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$43,170.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.



Conclusion

The Landlord breached section 51(2) of the Act by not using the rental unit for the purpose stated within the Two Month Notice within a reasonable period of time. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The circumstance submitted by the Landlord as an excuse from paying compensation to the Tenant does not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and policy guideline.

The Tenants are granted a monetary order in the amount of \$43,170.00.

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 10, 2021

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Residential Tenancy Branch