



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding A&M POULTRY FARMS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

On February 8, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord’s Use of Property, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s agents (the “Landlord”) and both Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Landlord acknowledged that they did not submit or serve any evidence.

### Issues to be Decided

Should the Tenants receive compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated September 28, 2020 (the “Two Month Notice”), in accordance with section 51(2) of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

Both parties agreed to the following terms of the tenancy:

There is no written tenancy agreement related to this tenancy, only an oral agreement. The month-to-month tenancy began on November 1, 2018 and continued until the

Tenants moved out of the rental unit on December 1, 2020. The rent was \$1,500.00 and due on the first of each month. The Landlord did not collect a security deposit.

The Tenants submitted the first two pages of the Two Month Notice and stated the Landlord only served them the first two pages. The Two Month Notice stated that the reason for this tenancy to end on December 1, 2020 was that 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.

The Tenants stated that Landlord's agents had told them that one of their employees was going to move into the rental unit. The Tenants did not dispute the Two Month Notice and moved out of the rental unit on December 1, 2020.

The Tenants submitted that the Landlord failed to accomplish the stated purpose for ending the tenancy within a reasonable period after December 1, 2020.

The Tenants submitted photos of an empty rental unit, taken when one of the Tenants attended the unit to pick up some mail on January 4, 2021. The photos showed an empty lobby, living room and garage. The Tenant stated that no one answered when he knocked on the door and that the rental unit still appeared empty when he drove by a week later, noting that there did not appear to be any furniture in the rental unit and no cars in the driveway.

The Tenants are claiming compensation for the equivalent of 12 months rent, in the amount of \$18,000.00.

The Landlord testified that there was a delay in moving into the rental unit as they had to go shopping for some appliances for the rental unit and "the other people" weren't ready to move into the rental unit yet. When questioned about who was going to move into the rental unit, the Landlord stated that they had a worker, "a person in charge of the horses", who was going to move in.

The Landlord stated that there had originally been an oral agreement for the Tenants to do some work on the farm to compensate for the low rental rate. The Landlord said that the Tenants "weren't living up to the agreement" and as a result "removed" them from the unit.

The Landlord stated that they accommodated the Tenants throughout their tenancy and that they didn't do enough work for the Landlord to subsidize their rent.

### Analysis

Section 51(2) of the Act requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord has not taken

steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Two Month Notice, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

*Residential Tenancy Policy Guideline #50* states that 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.

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances.

I accept the Tenants' testimony and evidence that demonstrated the rental unit was empty until, at least, mid-January 2021. I accept the Landlord's evidence that there was a delay in occupying the rental unit, and that the "horse person" was the person who eventually moved into the rental unit versus a person owning voting shares in the corporation or a close family member of that person.

Based on the undisputed testimony and evidence of the Tenants and the Landlord's own admissions, I find that the Landlord has failed to take the steps to occupy the rental unit within a reasonable period after the effective date of the Two Month Notice, that being December 1, 2020. Furthermore, regardless of the delay to occupy the rental unit, I find that the Landlord has not followed through with the stated purpose for ending the 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.

In this case, the Landlord testified that they needed to purchase appliances and that the “person in charge of the horses” was not ready to move into the rental unit by mid-January 2021. I find that this explanation does not compare to the examples of extenuating circumstances provided in the *Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy*, nor are they circumstances that are unreasonable or unjust for a Landlord to pay compensation to the Tenants. I find that the Landlord failed to provide sufficient evidence of extenuating circumstances in this matter.

Based on the testimony and evidence in this matter, I find that the Tenants have successfully established a monetary claim pursuant to section 51(2) of the Act. As such, I find that the Landlord owes the Tenants the amount equal to 12 months’ rent payable under the former agreement; for a total of \$18,000.00.

I find that the Tenants’ Application has merit and that the Tenants are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

### Conclusion

I grant the Tenants a Monetary Order for the amount of \$18,100.00, in accordance with sections 51(2) and 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: June 09, 2021

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Residential Tenancy Branch