



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNECT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants DS (the tenant) and AS and the landlord YW attended the hearing. The landlord was assisted by counsel KY (the landlord). Witnesses for the landlord LY, YZ and MT also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Are the tenants entitled to:

01. a monetary award for compensation under section 51(2) of the Act?
02. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in May 2011 and ended on August 06, 2020. Monthly rent at the end of the tenancy was \$2,950.00, due on the first day of the month. The landlord returned the security deposit of \$1,250.00 to the tenants. The tenancy agreement was submitted into evidence.

Both parties also agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served in June 2020. A copy of the Notice was submitted into evidence. It states the rental unit will be occupied by the landlord. The effective date of the Notice was August 31, 2020.

The tenant affirmed the landlord said she would evict the tenants if they did not agree to pay a higher rent twice during the tenancy. The tenant stated the landlord did not move to the rental unit after the tenants moved out. The tenants submitted into evidence photographs of the rental unit in October, November and December 2020 showing the blinds closed during the day and the lights turned off at night.

The landlord's witness MT testified that after the tenants moved out the landlord hired a contractor to paint the rental unit and to replace the carpet. The repairs were conducted during three weeks.

The landlord affirmed she moved to the rental unit on September 19, 2020. The landlord submitted into evidence a move-in fee receipt dated September 19, 2020. The landlord explained her assistant MT paid the move-in fee on her behalf.

The landlord submitted into evidence utility bills indicating the landlord's name and the rental unit's address. The cable bills are dated October 17, November 17, December 17, 2020 and January 17, 2021. The electricity bills are dated September 01, October 01, November 02, and December 02, 2020.

The landlord submitted into evidence a medical document indicating she had a surgery on October 18, 2019. The landlord stated this surgery was necessary because she was diagnosed with Cancer one month before the surgery. The landlord's mother passed away on November 28, 2019 in the landlord's country of origin. The landlord could not attend her mother's cremation because she could not travel due to her health condition. The landlord was able to travel to her country of origin on October 04, 2020 and attended her mother's burial ceremony on November 24, 2020. The landlord submitted

into evidence a gravesite certificate indicating her mother was buried on November 24, 2020.

The 60-year-old landlord affirmed she did not return from her country of origin after her mother's burial ceremony because her country of origin was safer from the Covid-19 virus than British Columbia.

The landlord affirmed her furniture is in the rental unit, the rental unit's utilities are in her name and that she continues to use the rental unit as her residence until today. The landlord did not return from her country of origin because of extenuating circumstances.

The tenants are claiming compensation in the total amount of \$35,400.00.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 4 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Branch Policy Guideline 50 states:

**Reasonable Period**

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.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

Based on the undisputed testimony and the Notice, I find the Notice was served with the intent of the landlord occupying the rental unit.

Based on the convincing testimony offered by the landlord and witness MT, the move-in fee receipt, the cable and electricity bills, I find the landlord moved to the rental unit on September 19, 2020 and occupied it as her living accommodation. I further find the amount of time the rental unit was empty after the Notice's effective date (from September 01 to 18, 2020) is reasonable and painting the rental unit and replacing the carpet are minor renovations.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Per section 51(2) of the Act, as the Notice's effective date was August 31, 2020, the landlord must occupy the rental unit from September 01, 2020 to February 28, 2021.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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 Branch Policy Guideline 50 states:

#### E. EXTENUATING CIRCUMSTANCES

**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

**(emphasis added)**

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

Based on the landlord's coherent testimony, the tenants' photographs, the October 18, 2019 medical document and the gravesite certificate, I find the landlord proved, on a balance of probabilities, that because of extenuating circumstances the landlord did not

occupy the rental unit after October 04, 2020. The landlord could not travel earlier to her country of origin due to her health condition. After the landlord attended her mother's burial ceremony on November 24, 2020 the Covid-19 pandemic worsened in British Columbia. Furthermore, the landlord is in a high-risk age group for the pandemic.

I note the landlord does not have control over her health condition, her mother's death and the pandemic.

As such, the landlord is excused from paying the 12-month rent compensation under section 51(2) of the Act.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

### Conclusion

I dismiss the tenants' application without leave to reapply.

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 04, 2021

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Residential Tenancy Branch