



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNETC, FFT

### **Introduction**

This hearing was convened in response to the Tenant's application for a monetary Order for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 31, 2021 the Dispute Resolution Package and all evidence she submitted to the Residential Tenancy Branch was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 18, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via email, although he does not recall the date of service. The Tenant acknowledged receiving this evidence on May 18, 2021 and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and Tenant agree that:

- this tenancy began on July 01, 2008;
- at the end of the tenancy the monthly rent was \$1,012.70;
- the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, dated June 25, 2020, which declared that she must vacate the rental unit by September 01, 2020;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because it would be occupied by a child of the landlord or the landlord's spouse; and
- the rental unit was vacated on September 01, 2020.

The Tenant is seeking compensation pursuant to section 51(2)(a) of the *Residential Tenancy Act (Act)* because the Landlord's son did not move into the rental unit.

In response to this claim the Landlord stated that:

- when the Two Month Notice to End Tenancy for Landlord's Use was served to the Landlord his son planned to move into the rental unit;
- his son was living in Toronto when the Two Month Notice to End Tenancy for Landlord's Use was served;
- his son had been laid off and was, therefore, intending to move from Toronto to the rental unit;
- on September 08, 2021 he began renovating the rental unit in preparation for his son moving into the unit;
- sometime in September his son registered the utilities for the unit in his name;
- sometime after his son registered the utilities in his name, his son told him he planned to continue residing in Toronto, for professional reasons; and
- after his son informed him that he would not be moving into the rental unit, he contacted the Tenant and confirmed that she had found alternate

accommodations;

- after his son informed him that he would not be moving into the rental unit, he completed the renovations and re-rented it to a third party; and
- he cannot control the decisions made by his son.

The Landlord submitted a letter from his son, in which the son declared that:

- he is a pilot;
- he was laid off from work;
- for financial reasons he decided to move from Toronto into the rental unit;
- after he decided to move, he was told by his employer and colleagues that it would be beneficial for him to remain in Toronto “to be ready to go for simulator training”; and
- he decided to remain in Toronto.

### Analysis

On the basis of the undisputed evidence, I find that:

- the Tenant was paying monthly rent of \$1,012.70 when this tenancy ended;
- the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Act*, that required her to vacate the rental unit by September 01, 2020;
- the rental unit was vacated by September 01, 2020;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit would be occupied by a child of the landlord or the landlord's spouse;
- the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlord's son intended to relocate to the city and reside in the rental unit;
- sometime after the rental unit was vacated the Landlord's son opted not to relocate to the city, for professional reasons; and
- the rental unit was subsequently re-rented to a third party.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. As the evidence clearly establishes that the Landlord's son did not reside in the rental unit for a period of at least six months, I find that the Landlord must pay the Tenant \$12,152.40, which

is the equivalent of twelve times the monthly rent.

Section 51(3) of the *Act* authorizes me to excuse a landlord from paying the tenant the amount required under subsection (2) if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or 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, with which I concur, reads, in part:

*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*

I find that the Landlord was unable to use the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use because his son changed his mind about moving to the community/rental unit. I do not find that these are circumstances that should excuse the Landlord from paying the penalty imposed by section 51(2)(a) of the *Act*.

Ending a tenancy pursuant to section 49 of the *Act* is a very serious decision which has tremendous impact on the tenant being displaced. Before a landlord ends a tenancy because a child wishes to move into the rental unit, I find it is incumbent upon the landlord and the child to be certain of their intent. In these circumstances, after the tenancy ended the Landlord's son determined it would be in his best interests to remain in Toronto. I find that he should have carefully considered his decision to leave Toronto before the Landlord ended this tenancy. While I accept that the Landlord cannot control his son's decisions, in these circumstances he will bear the cost of this

decision.

I find that the Tenant's application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

### Conclusion

I find that the Tenants have established a monetary claim of \$12,252.40, which includes \$12,152.40 for compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$12,252.40. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 03, 2021

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Residential Tenancy Branch