



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

On February 4, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with A.R. attending as counsel for the Landlord. R.Y. attended the hearing, well after the hearing commenced, as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of A.R., provided a solemn affirmation.

All parties confirmed that the Tenant’s Notice of Hearing and evidence package were served in accordance with the *Act* and the Rules of Procedure. As such, this evidence was accepted and considered when rendering this Decision.

As well, all parties confirmed that the Landlord’s evidence was served in accordance with the *Act* and the Rules of Procedure. As such, this evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2019 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 31, 2020. Rent was established at \$2,600.00 per month and was due on the first day of each month. A security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant was served with the Notice on October 6, 2020. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlord checked off the box indicating that "The landlord or the landlord's spouse" would be occupying the rental unit. The Landlord did not stipulate on the Notice an effective end date of the tenancy. During the hearing, the parties disagreed that they came to a mutual end date of the tenancy based on the Notice. Email exchanges were submitted as documentary evidence with respect to their conversation regarding the end date of the tenancy.

The Tenant advised that the Landlord was represented by a realtor, and that the Landlord came to the rental unit to pick up her mail on June 3, 2019. At that time, she

told the Tenant that the rental unit was for sale and that there would be multiple open houses. This demonstrated the Landlord's intention to sell the rental unit. He stated that the rental unit was listed for sale for the majority of the tenancy and that he accommodated the Landlord in allowing multiple showings of the rental unit to prospective buyers. He stated that the Landlord brought a friend to the rental unit in August 2020 and told him that this person was a prospective buyer. She then asked him to sign a mutual agreement to end the tenancy. He stated that the rental unit was taken off the market approximately one month before the Notice was served.

He submitted that the Landlord had also informed him at one point that she might also move into the rental unit to avoid paying taxes or that she would renovate the rental unit to sell, to avoid paying taxes. He stated that after he was served the Notice on or around October 6, 2020, the Landlord informed him that she needed to move in as soon as possible, which was on or around December 7, 2020. He advised her of the requirement to provide two, full months' notice. He testified that on October 16, 2020, he served his 10 days' written notice to end the tenancy early, pursuant to Section 50 of the *Act*, effective for October 31, 2020.

From the date of his notice to November 26, 2020, which was the date that the Landlord took a flight out of town, the Landlord had ample time to move in or commence renovations. He stated that the layout of the rental unit and the number of stairs would not be a suitable living condition for the Landlord's frail or elderly parents. It is his position that the Notice was not served in good faith as the Landlord did not have an intention to move in and occupy the rental unit. He has returned to the rental unit multiple times and to date, it remains vacant and unoccupied. He submitted video evidence to support this position.

As it is his belief that the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice, he is seeking compensation in the amount equivalent to twelve months' rent (**\$31,200.00**) pursuant to Section 51(2) of the *Act*.

The Landlord advised that she was renting a one-bedroom unit elsewhere. She confirmed that the rental unit was for sale and that she organized approximately 19 showings throughout the tenancy. In August 2020, she decided not to sell the rental unit and took it off the market. Instead, she wanted to take over the rental unit so that she and her boyfriend, now husband, could move in. As well, she had hoped that her family could visit as well. She had planned this to coincide with Chinese New Year, but she needed approximately one month to renovate the rental unit to update it to her liking.

She did not put an effective date on the Notice because she was hoping to work this out with the Tenant; however, she ideally wanted the Tenant to move by December 2020.

She stated that she contacted three repair people in August 2020 to get estimates of potential renovations. However, she did not organize any start dates for these upgrades. As well, she became too busy in October 2020 to manage the affairs related to the rental unit.

A.R. advised that it was always the Landlord's intention to move into the rental unit on February 1, 2021 with her mother, father, and boyfriend, who is now her husband. However, her grandmother fell ill, and the Landlord travelled back to China on November 26, 2020. The Landlord had a return ticket booked for February 26, 2021. Unfortunately, her grandmother passed away on December 15, 2020 and her father fell ill as well while she was there, requiring surgery on January 13, 2021. On February 10, 2021, the Landlord was advised by her airline carrier that her return flight to Canada was cancelled due to COVID-19 and no alternate flights were offered. He submitted that the Landlord attempted to plan a future flight to return, but this was delayed because her husband was waiting for his Visa to be approved. Furthermore, on March 11, 2021, her doctor recommended against flying as she was three-months pregnant.

He conceded that the rental unit has been vacant since the Tenant gave up vacant possession of the rental unit and he referenced the case of *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) to support the position that the Landlord had always intended to move into the rental unit. If not for the extenuating circumstances of her family's health and of her cancelled flight due to the pandemic, she would have occupied the rental unit. He cited documentary evidence submitted to support the submissions with respect to the Landlord's flights and the health of her family members. As well, he submitted that the Landlord has neither sold the rental unit nor re-rented it to someone else. Thus, it is his position that this supports the likelihood that the Landlord wanted to occupy the rental unit for her own use.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 68 of the *Act* states that if the Notice does not comply with Section 52, the Notice may be amended if it is clear that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice, and that it is reasonable to amend the Notice.

When reviewing this Notice, it is evident that there has been no effective end date of the tenancy noted on the Notice. In assessing the documentary evidence before me, it is clear that there was a discussion regarding this effective date and that the parties came to the conclusion that the effective end date should be December 31, 2020. As I am satisfied of this, and as this date would be consistent with the date the tenancy should end based on this type of notice, I am satisfied that the Notice should be amended to reflect the correct effective end date of the tenancy, being December 31, 2021.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on October 6, 2020 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**51 (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.*

Regarding this situation, I also find it important to note that 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.”

Furthermore, this policy guideline also notes that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy.”

Finally, the policy guideline outlines the following about 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.”

When reviewing the totality of the evidence and testimony before me, I note that the Landlord advised that it was her good faith intention to move into the rental unit with her spouse and to have her parents move in as well. However, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

As the consistent evidence is that the Landlord did not do so, I must then consider her submissions with respect to extenuating circumstances. As noted above, I am satisfied that the effective end date of the tenancy was December 31, 2021 and that this was the date that the Landlord was required to move into and occupy the rental unit.

The Landlord advised that she took an unexpected trip to China on November 26, 2020 to visit her ailing grandmother, and this is supported by the flight itinerary that was provided as documentary evidence. While there, she submitted that the airline cancelled her return flight on February 10, 2021 due to COVID-19, and evidence of the cancellation of the flight was provided as documentary evidence.

When considering these factors as extenuating circumstances, I find it reasonable to conclude that a flight cancellation could be a possible, expected consequence when choosing to travel during a worldwide pandemic. Moreover, I find that the Landlord’s original return flight for February 26, 2021 would be well past the effective end date of the tenancy where the Landlord would have had to use the property for the stated purpose on the Notice.

However, I also recognize the challenges that the pandemic has caused, and I also recognize the need to attend to family matters as well, especially in these turbulent times. While I have some doubts regarding the consistency and reliability of the Landlord’s testimony and submissions, I find that, on a balance of probabilities, the Landlord provided sufficient evidence of extenuating circumstances that prevented her from returning to the country to occupy the rental unit after the effective date of the Notice. As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months’ rent pursuant to Section 51 of the *Act*.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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 23, 2021

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Residential Tenancy Branch