



# 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 as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$29,365.00, for 12 months' compensation due to the purchaser failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 27, 2020 (2 Month Notice), and to recover the cost of the filing fee.

The tenants, a witness for the tenant, BB (witness), the purchaser, counsel for the purchaser, BB (counsel) and an interpreter for the purchaser, RH (interpreter) attended the teleconference hearing. The witness was not called to testify during the hearing. All participants were affirmed, except for counsel who has already sworn an oath. The hearing process was explained, and the parties were given an opportunity to ask questions during the hearing. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires. The word "purchaser" and "respondent" have been used synonymously throughout this decision.

As counsel objected to how the digital evidence was served on the USB drive including the lack of documentation to identify what contents were on the USB drive and whether the other party could open the contents of the USB drive, I have reviewed RTB Rule

3.10.1 which sets out the description and labelling requirements of digital evidence. Rule 3.10.1 states in part:

A party submitting digital evidence must:

- include with the digital evidence:
  - o a description of the evidence
  - o identification of photographs, such as a logical number system and description;
  - o a description of the contents of each digital file;
  - o a time code for the key point in each audio or video recording; and
  - o a statement as to the significance of each digital file;
- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and
- serve the digital evidence on each respondent in accordance with 3.10.4.

Given the above, I have excluded the entire contents of the USB drive digital evidence as I find the applicants confirmed that they did not confirm the respondent could view the digital evidence prior to the hearing and that the applicants confirmed that there was not description provided of the contents of the USB drive.

Regarding the remainder of the documentary evidence submitted by both parties, I find there were no issues presented and that the parties were sufficiently served in accordance with the Act as a result.

#### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Due to the lack of a Monetary Order Worksheet submitted by the tenants, I dismiss any amount over the 12 times monthly rent being claimed in this application, as I find the tenants have failed to set out in their application how they arrived at the amount claimed of \$29,365.00. In other words, I find this application is for 12 times the monthly rent of \$1,795.00, which totals \$21,540.00, plus the 100.00 filing fee. Although the tenants mention “had to hire movers and cleaners...had to rent short term accom. and put belongings in storage” I find that as there is no monetary breakdown of the remainder of the total \$29,365.00 claim before me to address the cost breakdown of the movers, cleaners, short term accommodation and storage.

Given the above and pursuant to Rule 2.9, which states that you cannot divide a claim, and pursuant to section 59(2)(b) of the Act which requires that an applicant include full particulars, I refuse to hear any dispute other than the 12 month compensation in the amount of \$21,540.00 plus the filing fee. Section 59(5)(c) of the Act I find applies to any amount over the \$21,540.00 before the filing fee is applied, and I do not grant leave to reapply in accordance with Rule 2.9 as I find that giving the tenants the opportunity to divide this claim would unfairly prejudice the respondent. Accordingly, I will only be considering the issues stated below.

#### Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2019 and reverted to a month to month tenancy after September 30, 2020. Monthly rent was \$1,795.00 per month and was never increased during the tenancy.

The tenants were served with the 2 Month Notice dated November 27, 2020. The effective vacancy date listed on the 2 Month Notice was January 31, 2021. The tenants testified that they vacated on January 30, 2021 while the translator stated that they vacated on January 31, 2021. The reason stated on the 2 Month Notice is:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The tenants did not dispute the 2 Month Notice and vacated on January 29, 2021. The tenants are seeking compensation in the amount of 12 months' rent due to the purchaser re-renting the rental unit to new tenants shortly after the applicants vacated the rental unit. Counsel submits that the respondent occupies a room in the basement of the home, and that the remaining other bedrooms upstairs and downstairs have been rented to new tenants.

The tenants provided two rental ads from Kijiji. The first ad is dated February 2, 2021 (Ad 1) and the second ad is dated February 8, 2021 (Ad 2). Ad 1 states "2 BEDROOMS UPSTAIR FOR RENT in a nice and clean house in Nanaimo" and lists the rental unit as 2 bedroom and 1 bathroom for \$1,450.00 per month and the name of the poster matches the first name of the purchaser. The purchaser did not deny posting the ad during the hearing. The posting also indicates that they have 2 listings. Ad 2 states "ROOM FOR RENT in a nice and clean house in Nanaimo" and lists 1 bedroom and 1 bathroom for \$550.00 and also states "For February, March and April are only \$550/month. \$600/month including utilities & internet when the kitchen is done in April" and "Shared bathroom, kitchen and laundry room."

While the parties disputed the number of bedrooms within the home, the tenants had rented the entire home during their tenancy for \$1,795.00 per month. Counsel presented several Affidavits, which confirm that there are new tenants renting from the respondent and that witnesses saw the respondent move into the rental unit to a lower bedroom and that the respondent uses that bedroom as their normal residence.

Counsel submits that the tenants have the onus of proof, which I will address later in this decision. Counsel also submits that the purchaser not building a kitchen in the basement of the home proves nothing and that it was the intention of the purchaser to build a kitchen in the basement. Counsel also referred to a previous RTB decision dated May 29, 2018, which reads in part on page 3 as follows:

Having ownership of the house the purchaser determined to only live in a portion of it and rent the remainder which is their prerogative as owner. As a result, I find the tenant has not established entitlement to compensation from the purchaser. I **dismiss** the tenant's application in its entirety.

[Reproduced as written]

Counsel also referred to a Notice of Assessment from the Canada Revenue Agency, which supports that the subject property is in the name of the respondent. During the hearing counsel confirmed by way of questioning the purchaser that they are a Head Chef at a restaurant, that the purchaser purchased the property on November 18, 2020 and that as of February 2, 2021, the purchaser took over the property and that the purchaser wanted to move from another residence into the basement of the subject property. Counsel directly asked the purchaser if they reside in the subject property and the purchaser confirmed they did.

### Analysis

Based on the documentary evidence, the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

I will first address the onus of proof. RTB Rule 6.6 states in part, “The standard of proof in a dispute resolution hearing is a 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus is on the other party.”

Counsel submits that the onus of proof is on the tenants. I find counsel is mistaken on this fact, as noted above, the onus to prove their case is often on the person making the claim; however, **in some situations the arbitrator may determine the onus is on the other party**. Further, I find the onus has changed as of the July 1, 2021 commencement for sections 13 to 18 of Bill 7 – *Tenancy Statutes Amendment Act* (Bill 7) and which was in effect at the time of the hearing as Bill 7 received Royal Assent on March 25, 2021. The link to Bill 7 can be found here:

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/1st-session/bills/progress-of-bills>.

Bill 7 is retrospective and therefore any application presently before me must be considered in light of the legislative change.

Regardless of Rule 6.6 or any discussion around onus, section 51(2) of the Act applies and states:

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.

While section 51(3) of the Act states:

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.

I find the purchaser has not raised extenuating circumstances that prevented them from accomplishing the stated purpose listed or using the rental unit for the that stated purpose for at least 6 months' duration beginning within a reasonable period after the effective date of the 2 Month Notice.

The purchaser testified that they moved into one part of the rental unit and admitted to renting out other parts of the rental unit. RTB Policy Guideline 50: Compensation for Ending a Tenancy I find takes a reasonable approach and states "A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months."

Furthermore, RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member I find takes a reasonable approach and is dated

July 2021 to reflect the March 9, 2021 *Blouin v. Stamp* decision and was in effect at the time this hearing took place, and states in part on page 3 of 4:

**C. OCCUPYING THE RENTAL UNIT...**

***Reclaiming a rental unit as living space...***

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. **In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months.** (See for example: *Blouin v. Stamp*, 2021 BCSC 411)

[Emphasis added]

I find I am not bound by the previous decision submitted by Counsel pursuant to section 64(2) of the Act which states:

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

[Emphasis added]

Given the above, I find the purchaser has failed to establish that they have occupied the entire home for at least 6 months and instead, re-rented the upper portion and at least one other bedroom downstairs, contrary to the stated purpose on the 2 Month Notice.

Based on the above, as I am satisfied that the purchaser re-rented the upper portion of the rental unit and at least one bedroom downstairs, and pursuant to section 51(2) of the Act I find the purchaser must pay the tenants 12 times the monthly rent of \$1,795.00. I find the purchaser has not met the onus of proof to support that they complied with the reason stated on the 2 Month Notice given *Blouin v. Stamp*, 2021 BCSC 411, and Policy Guideline 2A as the purchaser has re-rented a majority of the rental unit. As a result, I grant the tenants **\$21,540.00** (12 x \$1,795.00).

As the tenants' application was partially successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$21,640.00** comprised of the 12 months' compensation plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the Act in the amount of \$21,640.00.

The remainder of the tenant's application is dismissed without leave to reapply.

### Conclusion

The tenants' application is partially successful. I find the purchaser failed to use the rental unit for the stated purpose and instead, rented a majority of bedrooms in the rental unit to new tenants.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$21,640.00 as indicated above. The monetary order must be served on the respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The respondent is reminded that they can be held liable for all enforcement costs under the Act.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the respondent.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 15, 2021

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Residential Tenancy Branch