



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

Dispute Codes      MNDCT

### Introduction

On August 31, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for compensation. The matter was set for a participatory hearing via conference call.

On December 11, 2020, the Tenant and her advocate attended the original hearing; however, the Landlord did not attend. The original arbitrator heard the matter and completed a Decision on December 11, 2020.

The Landlord submitted an Application for Review Consideration on December 29, 2020 and subsequently, a new hearing was ordered. As part of the Review Consideration Decision, the Landlord was ordered to serve the Tenant with the Landlord’s current address for the purposes of serving documents. The Tenant was also ordered to serve the Landlord with their original Application for Dispute Resolution and the related evidence.

A Review Hearing was conducted on May 10, 2021 where the Tenant presented oral and documentary evidence and introduced two witnesses, who also provided testimony. The hearing was adjourned due to inadequate time for both parties to fully present their evidence.

On July 6, 2021, the Landlord and her husband Z.Z., and the Tenant and her advocate 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.

Preliminary Matter – Service and admission of evidence

At the start of the May 10, 2021 hearing, the Tenant testified that the Landlord did not provide an address for service as ordered in the Review Consideration Decision. The Tenant advised that they had to seek authorization to serve the Landlord via substituted service, specifically by email.

The Landlord stated they forwarded the Tenant their service address when they forwarded the Application for Review Consideration to the Tenant. The Tenant stated that she only received the Review Consideration Decision and not the Application.

I heard from all parties about the service of their evidence on one another and as a result, I find that the parties exchanged the documentary evidence that I have before me. When I asked, all parties agreed that the evidence was exchanged and reviewed. I note that, as a result of the May 10, 2021 hearing being adjourned, the parties will have had extra time to consider each other's evidence.

Issue to be Decided

Should the Tenant receive a Monetary Order for compensation, in accordance with section 51(2) of the Act?

Background and Evidence

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2016 and continued as a month-to-month tenancy. The rent was \$1,500.00 and due on the first of each month. The Landlord collected a security deposit in the amount of \$750.00. The return of the security deposit was addressed in a separate Residential Tenancy Branch dispute resolution hearing (see file number on face page of this Decision).

Both parties agreed to the following facts regarding the Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 12, 2018 (the "Two Month Notice"):

The Tenant received the Two Month Notice on October 12, 2018. The Two Month Notice had an effective/move-out date of December 31, 2018. The reason for the end of the tenancy was that the Landlord was going to move into the rental unit with her husband. As noted on the Two Month Notice, the rental unit will be occupied by the landlord. The Tenant moved out of the rental unit on January 15, 2019.

The Tenant (and her advocate) claimed that the Landlord did not move into the rental unit. The Tenant submitted the following:

- Tenant attended the rental unit in spring 2019 to check for mail and noted, when looking through the windows, that the living room and a bedroom were both empty of furniture.
- 2 pictures (taken March 4, 2019) of the back of the rental unit to demonstrate that the yard is derelict and the unit looks as if it is unlivd in. Tenant claimed that if the Landlord lived there, she would not hang sheets (not blackout blinds as claimed by the Landlord) over the French doors or leave the yard unkempt.

The Tenant called Witness T.M. who provided the following affirmed testimony:

- Witness T.M. lives next door to the rental unit, approximately 10 feet away, and can clearly see into the rental unit, can easily see when lights are on and off and that no one occupied the rental unit.
- Tenant is a stay-at-home mom and views the rental unit every day.
- Can see clearly into the solarium and living room.
- Observed renovations for first couple of months, but noticed that no one ever moved in.
- Can recognize the Landlord and her vehicle. No cars parked over night.
- No furniture in unit, nothing on the shelves, mop in solarium never moved.
- The Landlord or the maintenance person might stop by once every two weeks.
- The property continued to become more derelict.
- There is no way the Landlord lived in the rental unit at anytime in 2019.
- Submitted written statement, dated January 26, 2020.

The Tenant called Witness S.M. who provided the following affirmed testimony:

- Witness S.M. lives across the alley from the residential property and faces directly towards the balcony and kitchen of the main floor, rental unit. Can observe the movements in the unit and also the tenants who live on the top floor.
- Observed a U-Haul van attend the residential property in March 2019 and noted that nothing was moved into the rental unit. The van had no furniture or boxes, and no unpacking or loading into or out of the unit occurred.
- Between January 16 and the end of March 2019, there was a painter on site. The same man returned in May 2019 where he was observed using a table saw on the back deck of the rental unit. He parked his truck in the alley and when he left, there were no tenants that would come to stay in the unit at night or the weekends.
- On July 9, 2019, for the first time since the Tenant moved out, the witness observed an Asian man who parked his car in the back alley, went inside and

turned on a kitchen light. The light remained on for the next few days and the car also remained in the back-alley driveway. The man has not been seen since.

- The house and the yard have become extremely run down since the Tenant moved out.
- There is never anyone moving about in the kitchen at any time of the day, putting out garbage or recycling. There are no cars parked or coming and going.
- The rental unit has remained uninhabited since the Tenant moved out in January 2019. It is impossible that the Landlord lived in the rental unit.
- Submitted written statement, dated August 6, 2020.

The Tenant testified that, as a result of the various dispute resolution processes, she sent the Landlord registered mail to the rental unit on three different occasions: July 12, 2019, October 17, 2019 and February 13, 2020. The Tenant questioned why all three packages were returned to her if the Landlord lived at the rental unit.

The Landlord submitted documentary evidence stating that they intended on moving in on January 1, 2019; however, as the Tenant was granted 15 more days to provide vacant possession, the schedule change affected the Landlord's plans. The Landlord testified that her husband, Z.Z., did a lot of work before he moved into the rental unit, which included replacing all the curtains with blackout ones.

The Landlord submitted documentary evidence which stated that on March 14, 2019, her husband rented a U-Haul and "moved all our furniture to the property". The Landlord submitted a copy of the invoice indicating that the rental time was between 9:16 a.m. and 11:00 p.m. on March 13, 2019. During the hearing the Landlord stated that they only required one trip to move all their furniture. When asked, the Landlord's husband, Z.Z. stated that they unloaded the van at night as they worked during the day. Z.Z. stated he moved a lot of their belongings with his car in the weeks previous and that their life is really simple; therefore, there were no large pieces of furniture moved into the rental unit, only a bed.

The Landlord provided several photographs to demonstrate that they lived in the rental unit.

- Photo of a leak under the sink where there were some cosmetics on the shelf, dated July 13, 2019.
- Photo of Z.Z. making dinner in the kitchen, dated July 17, 2019.
- Photo of Staples truck outside of residential property for a delivery to the unit, dated August 7, 2019.

- Photo of a contractor cleaning the ducting in the rental unit, dated October 2, 2019.

The Landlord submitted the bills for internet services between January 2019 to November 2020. She stated that in the middle of August 2019, they experienced “really bad internet. So, we switched the internet provider from Shaw to Telus.”

The Landlord submitted documentary evidence to support that she obtained a BC Services Card with the address of the rental unit on it.

The Landlord submitted documentary evidence to support that she used the rental unit address for her 2019 Income Tax.

The Landlord submitted documentary evidence to support that she declared the status of the residential property under the Vancouver Empty Homes Tax Program as follows:

- 2018 – Tenanted
- 2019 – Principal Residence – Homeowner
- 2020 – Tenanted

The Landlord testified that they slowly started to move into the rental unit at the end of February 2019, were fully moved into the unit on March 13, 2019; moved out of the unit in March 2020, and sold the residential property in August 2020.

The Landlord stated that the only people that could really tell if they lived in the rental unit were the upstairs tenants. The Landlord acknowledged that they did not get a statement from the tenants or call them as witnesses for this hearing.

In response to the Tenant’s statements about not receiving the registered mail, the Landlord stated that they received the notices, but could not make it to the post office to pick up the mail.

When asked, Z.Z. stated that he has his own car but that he didn’t park it at the rental unit as once he got a nail in his tire. He stated he would park his car close-by, in the neighbourhood.

### Analysis

Section 51(2) of the Act directs the landlord who gives a tenant notice to end the tenancy under Section 49 of the Act must pay the tenant an amount that is the

equivalent of twelve times the monthly rent payable under the Tenancy Agreement if 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 the rental unit is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the parties agreed that the tenancy was ended as a result of the Landlord serving the Two Month Notice to the Tenant for the specific reason that the rental unit was going to be occupied by the Landlord. If I find that the Landlord has not taken steps to occupy the rental unit within a reasonable period after January 15, 2019, or if they failed to occupy the rental unit for at least six month's duration beginning within a reasonable period after January 15, 2019, I will order the Landlord to pay the Tenant twelve times the monthly rent of \$1,500.00.

The Landlord claimed that they moved into the rental unit on March 13, 2019, after a delay caused by an extension for the Tenant to stay in the unit until January 15, 2019. The Landlord and her husband Z.Z. testified that they lived in the rental unit for one year, from March 2019 to March 2020.

The Tenant claimed that the Landlord never moved into the rental unit and provided pictures of empty rooms and eye-witness accounts from the neighbours.

When considering the Tenant's testimony, their documentary evidence and the statements provided by Witnesses T.M. and S.M., I find that the Tenant has established a convincing case that the Landlord did not occupy the rental unit. I place significant evidentiary weight on the testimony of the neighbours, especially after seeing photos of how close in proximity the neighbouring homes are to the residential property (that includes the rental unit).

The witnesses both stated that they could clearly see into the rental unit, from different angles, and were able to observe the comings and goings of any occupants of the rental unit. Both witnesses were adamant that no one lived in the rental unit in 2019 as there were no cars, no people other than the odd worker, no lights going on and off, no garbage bins or recycling containers being set out. I find that Witness T.M. and S.M.'s evidence is compelling.

I acknowledge that the Tenant's evidence and the witness's testimony are only half of the evidence and background provided. I have also fully considered the testimony and documentary evidence provided by the Landlord and her husband, Z.Z.

I find the Landlord's submission that they "moved all our furniture to the property" with the rented U-Haul in March 2019 conflicted with the testimony of Z.Z. who stated they

didn't move all that much with the U-Haul. Z.Z. testified that he had moved a lot of the smaller items prior to March 13, 2019 and then, after hearing that Witness S.M. observed the actions surrounding the U-Haul, stated that the move occurred during the night and that there was only one large item, being a bed. I find that the invoice of the U-Haul and the conflicting testimony of the Landlord fails to support that the Landlord moved their personal property into the rental unit.

The Landlord submitted four pictures. Only one showed a picture of a male, identified as Z.Z., cooking in the kitchen. I find that the other 3 pictures did not provide any evidence of the Landlord living in the rental unit. I find it unusual that the Landlord was unable to provide any other pictures, after claiming to live in the rental unit for one year, that demonstrated the rental unit was furnished and occupied by the Landlord and her husband. I find that the one picture of Z.Z. cooking in the kitchen does little to convince me that the Landlord moved into the rental unit.

The Landlord submitted internet bills to demonstrate they lived in the rental unit. These were the only utility-type bills the Landlord submitted. The Shaw bills showed that the Landlord had set up an account for internet at the residential property in January 2019. The Landlord also submitted internet bills for Telus which did not show the address for service. The Telus bills were from September 2019 and continued until December 2020. I note the Landlord testified that they moved out of the rental property in March 2020 and sold the residential property in August 2020. Upon review of the bills, I noticed that the Landlord did not pay the first 5 months of Shaw bills that appeared to be sent to the residential address for payment. Also, it appears that the Landlord claimed to have kept paying the Telus bills for 7 months after they moved out of the rental unit and 4 months after they sold the residential property. Based on the above, I find that the internet bills provide insufficient proof that the Landlord moved into the rental unit.

The Landlord claimed that the only people who would be able to tell if the Landlord lived in the rental unit would be the tenants who lived upstairs. I too, would have liked to have heard from these tenants; however, the Landlord failed to obtain affidavits or call the tenants as witnesses. I am left to consider the testimony and written statements from the other neighbours: Witnesses T.M. and S.M.

I accept that the Landlord changed her BC Services Card to show that her address was that of the rental unit. The Landlord also submitted her 2019 taxes which provided the address of the rental unit. The Landlord submitted her claims for the Vancouver Empty Homes Tax Program to verify that she claimed that the rental unit was her principal residence in 2019. I find that the Landlord completed several administrative tasks in an attempt to demonstrate that she lived at the rental unit; however, it does little to convince me that the Landlord moved into the rental unit.

As of July 1, 2021, there is new legislation that changes the onus from the tenant to the landlord to establish that they accomplished the stated purpose for ending the tenancy.

These changes are to be applied retrospectively; however, in this case, it becomes somewhat complicated as these hearings were heard both prior to and after the effective date of July 1, 2021.

As a result, rather than placing the onus on the Tenant or the Landlord to establish whether the Landlord took the necessary steps to occupy the rental unit within a reasonable period after January 15, 2019, or to occupy the rental unit for at least six month's duration beginning within a reasonable period after January 15, 2019; I have considered the evidence of each party and have come to the following conclusion, based on a balance of probabilities: I find that the Landlord did not move into the rental unit. I find that the Landlord failed to provide sufficient evidence to prove that they occupied the rental unit for at least six month's duration beginning within a reasonable period after January 15, 2019. I find that the Tenant provided sufficient evidence to prove that the Landlord failed to take the necessary steps to occupy the rental unit, pursuant to section 51(2) of the Act.

I find that Landlord claimed they lived in the rental unit for one full year. I find that there were no extenuating circumstances submitted for my consideration that prevented the Landlord from accomplishing the stated purpose for ending the tenancy.

Based on my finding that the Landlord has failed to accomplish the stated purpose for ending the tenancy and has not used the rental unit for at least 6 months' duration, I order the Landlord to pay the Tenant twelve times the monthly rent of \$1,500.00, pursuant to section 51(2) of the Act.

### Conclusion

I grant the Tenant a Monetary Order for the amount of \$18,000.00, in accordance with section 51(2) 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: July 7, 2021

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Residential Tenancy Branch