



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

Each party acknowledged receipt of the other's materials. I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties had no questions about my direction pursuant to RTB Rule 6.11 and each confirmed that no recording was taking place.

In addition, the parties confirmed their email addresses and stated they understood that the decision and any applicable orders would be emailed to them.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties submitted substantial conflicting evidence in an 81-minute hearing. Each party submitted lengthy written submissions. I have only considered and referenced in this Decision significant facts and key portions of the relevant evidence to which I was referred submitted in compliance with the Rules of Procedure.

This is an application by the tenant for monetary compensation in the amount of \$9,600.00. This represents 12 times the monthly rent of \$800.00.

A copy of the tenancy agreement was submitted. The unit is a “side suite” in the landlord’s home. That is, the landlord and her family occupy part of the basement next to the unit and all the rest of the building. The landlord’s family consists of herself, her husband, and their three children.

The parties agreed to the following information about the tenancy between them.

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	December 1, 2017
Date of ending	March 31, 2020
Length of tenancy	40 months
Monthly rent payable on 1 st	\$800.00
Security deposit	\$400.00 (returned)
Pet deposit	none
Forwarding address provided	Yes
Date of landlords’ Application	March 17, 2021

The parties agreed the landlord issued a Two Month Notice to the tenant. A copy of the notice was submitted. The particulars are as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	March 12, 2020
Effective Date of Notice	May 12, 2020
Date and Method of Service	posted
Effective Date of Service	March 15, 2020
Reasons for Issuance	Rental unit will be occupied by landlord or landlord's close family member
Application for Dispute Resolution filed - date	Mar 17, 2021
Compensation	1 month rent

The parties agreed that the tenant accepted the Two Month Notice and moved out on March 31, 2020.

The landlord testified as follows. The unit was rented to non-family members on May 1, 2020 for \$1,500.00 monthly rent; the unit was somewhat expanded to include another small room. The building in which the unit was located, a family home, was sold by the landlord in March of 2021. Other than the month of April 2020, no family member occupied the unit after the tenant vacated.

The landlord was provided an opportunity to make submissions on whether there were circumstances that prevented them from using the rental unit for the stated purpose for at least 6 months duration after the effective date of the notice.

The landlord testified as follows. The landlord's husband was seriously injured and February 15, 2020. The landlord's parents intended to move into the unit to help the family. However, after living in the unit for one month after the tenant vacated, the landlord's mother returned to her previous home with the landlord's brother as the landlord's husband was better. The landlord's father, delayed while out of the country

because of pandemic travel restrictions, never lived in the unit. The landlord was faced with financial difficulties. She posted the unit for rent on a website in mid-April 2020, a copy of the ad being submitted.

The tenant testified as follows. Throughout the tenancy, the parties had many disagreements primarily over provision of cable/internet and noise from the landlord's home. On two occasions, the landlord verbally ordered the tenant to move out. Once, the landlord told the tenant that she, the landlord, had friends lined up to move in. The tenant expressed the belief that the landlord wanted her out because of her complaints and because she could get more rent from new tenants.

The tenant requested a Monetary Order in the amount of 12 times the monthly rent.

The landlords claimed their circumstances amounted to extenuating circumstances under the Act and requested that the tenant's claim be dismissed without leave to reapply.

Analysis

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that 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.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - the purchaser is a family corporation and a person owning voting shares in the

corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(emphasis added)

Section 51 (2) of the Act provides:

(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

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(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.

(emphasis added)

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline references the Act which allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family

member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property and does not move in. The Guideline aids understanding about what constitutes "extenuating circumstances".

Extenuating Circumstances

With respect to extenuating circumstances, Guideline #50 notes as follows:

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.

The Guideline provides circumstances that could be considered extenuating circumstances, that is, 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 Guideline provides that 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*

Compensation under section 51 of the Act

Based on the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find as follows:

As acknowledged by the landlord, I find the landlord did not occupy the rental property for the reason stated within the Two Month Notice for a six-month duration or as required by the Act. I find the landlord rented the unit for substantially more rent (\$1,500.00) only one month after the tenant moved out; the tenant's rent was \$800.00 monthly. These facts were not disputed by the landlord.

I have carefully considered and weighed the evidence provided by the parties as well as the submissions. In weighing the evidence, I find it more likely than not that the landlord intended to rent the unit to a non-family member as soon as she could. I find it unlikely that the landlord intended her parents to live in the unit for six months when she served the Notice. I find the landlord's explanations are not credible. I do not give much weight to her evidence.

Therefore, In the absence of convincing supporting documentary evidence, I do not find the landlord has met the burden of proof with respect to any of the factors she named as amounting collectively to "extenuating circumstances". The circumstances described by the landlord are not akin to the examples in the Policy Guideline.

Considering all the evidence submitted, the *Act* and the Guidelines, I find the landlord has *not* met the burden of proof under section 51(3) that there were extenuating circumstances justifying the landlord's failure to comply with section 51(2) making it unreasonable and unjust for the landlord to pay compensation.

I find the tenant's application succeeds. Therefore, pursuant to section 51(2) of the Act, I find the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Summary of Award

I accordingly award the tenant a monetary order calculated as follows:

ITEM	AMOUNT
12 months rent (\$800.00 x 12)	\$9,600.00
TOTAL MONETARY ORDER	\$9,600.00

I grant the tenant a Monetary Order in the amount of **\$9,600.00**. This Monetary Order must be served on the landlord. This Monetary Order may be filed in the Courts of the Province of British Columbia and enforced as a Court Order.

Conclusion

I grant the tenant a Monetary Order in the amount **\$9,600.00**. This Monetary Order must be served on the landlord. This Monetary Order may be filed in the Courts of the Province of British Columbia and enforced as a Court Order.

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: August 17, 2021

Residential Tenancy Branch