



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC FFT

### Introduction

The tenants seek compensation pursuant to section 51(2) of the *Residential Tenancy Act* (“Act”). In addition, they seek recovery of the application filing fee pursuant to section 72 of the Act.

The parties, along with a witness for the tenants, attended the hearing; the witness was excused from the hearing except when it was his turn to testify. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Issue

Are the tenants entitled to compensation?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began November 30, 2013. It ended on November 30, 2020 by way of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) that was served on October 28, 2020. The Notice indicated that the effective end of tenancy date was December 31, 2020. The tenants moved out halfway through the period.

Page two of the Notice indicates that the tenancy was ending because the rental unit would be occupied by the landlord. However, the tenants suspected that the real reason the Notice was being given was because they were paying below market rent and that

the landlord was hoping to get higher rent. The tenants were paying \$872.00 a month for a two-bedroom townhome that could have been rented for at least twice the amount.

The tenants testified that the rental unit was an older place that needed lots of renovations before another tenant would occupy it. The tenants also testified that they approached the landlord and offered to pay higher rent (\$1,400.00) in order to stay; they spoke on the phone. Unbeknownst to the landlord, the landlord's property manager then contacted the tenants and advised the landlord would be seeking \$1,800.00. Needless to say, the tenants found this amount to be out of their budget and decided to vacate.

One of the tenants (K.W.) added that the landlord had mentioned to them that a "huge issue" with the property was the rent freeze that was in place at the time. Apparently, the landlord sent the tenants some links to places that were renting out for much more.

During the many years that they lived in the rental unit the tenants became friends with the neighbours. The neighbours contacted the tenants to let them know that the landlord had not moved in as of December 1, 2020. (One of the neighbours was supposed to attend the hearing to testify but was ill and unable to do so.) Moreover, the tenants came to the conclusion that the landlord never really lived in the rental unit from December 2020 until sometime in the spring of 2021. Indeed, advertisements for the rental unit went up in the spring and new tenants took occupancy of the rental unit on July 15, 2021. The new tenants told the tenants that they were paying \$1,900 in rent.

The neighbours explained to the tenants that they never observed a moving truck, nor did they rarely ever see any vehicle parked in the assigned parking spot, until the new tenants moved in.

The tenant's witness (J.D.) testified that he has lived in unit #17, which is two doors down from the rental unit in question, for just over four years. He testified that the tenants moved out in 2020 and that renovations appeared to have been undertaken in December 2020. The rental unit then sat vacant until April or May 2021. He never saw anyone move into the rental unit during the period from December until the new tenants moved in July 2021.

Under cross-examination by the landlord, the witness testified that he saw a vehicle parked in the spot once, maybe more, but that "it was mainly empty." After the witness was excused at 1:52 PM, the landlord testified.

He testified that “if my plan was to increase the rent, I could’ve done it earlier.” Rather, he decided to move back to Campbell River and into the rental unit after his cousin died of COVID; prior to that, he “didn’t take the pandemic seriously.” The landlord further testified that he occupied the rental unit for “all of December” and then again in April. In December he undertook some basic renovations consisting of painting (it took him four days) and some cleaning.

In support of his case the landlord provided a copy of a VISA statement showing the purchasing of items in December. The statement shows frequent purchases in Campbell River from December 4 until December 23, at which point he appears to have taken a BC Ferries trip back to Vancouver.

He also provided a list of the various items that he said were in the rental unit, which would make it comfortable for him to reside there. He provided a bill of sale for a car that he purchased. He also changed his address on his driver’s license and provided a copy of the license into evidence. Finally, he tendered into evidence a copy of a Shaw bill for the period of April 13 to May 12, 2021.

The reason the landlord had to leave at the end of December was that he had originally registered for a course that was to be taught online. However, the post secondary institution then told him, nearer to the end of December, that the course was to be taught in-person. Thus, the landlord had to move back to the Mainland to attend to the course. He submitted a copy of the course completion certificate into evidence.

In April 2021 he returned to the rental unit and worked on the flooring, which took him about five days. Overall, the landlord argued that he resided in the rental unit for seven months, including, apparently, the period in which the rental unit sat empty for three months.

The landlord disputed the tenants’ version of events surrounding the possibility of them continuing with the tenancy if they paid more rent. He commented that he never said anything about rent being \$1,600 and that it was the *tenants* who approached him, and not the other way around. Further, he testified that the tenants told him (over the phone) that they would be willing to stay and pay \$1,800 if he renovated the rental unit. However, the tenants apparently disagreed with the proposed rent and moved out.

## Analysis

The standard of proof in a dispute resolution hearing is 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.

The tenants seek compensation under subsection 51(2) of the Act. This section of the Act reads as follows:

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this dispute, the effective date of the Notice is December 31, 2020. While much of the parties' testimony related to the landlord's activities in December, the "reasonable period" and the 6 months' duration did not, in fact, start until January 1, 2021. This is the period from which a reasonable period – and neither party made any argument nor provided any submissions as to what that period would be – must commence. In other words, if the reasonable period is as short as one day, then the landlord was required to use the rental unit for the stated purpose (that is, the landlord will occupy the rental unit) from the beginning of January until the end of June 2021.

In this dispute, the landlord occupied the rental unit for one month, possibly more, between January 1 and June 30, 2021. That is, he occupied the rental unit in April 2021. Though, the text messages with his property manager or agent in June reflect that his belongings were still in the rental unit. What I am not persuaded by is that the landlord can be found to be occupying the rental unit between January and April. He was, by any measure, absent from the property and the rental unit sat unoccupied for a period of three months.

Prima facie, the applicants would be entitled to compensation under section 51(2) of the Act. However, we must turn to subsection 51(3) of the Act which states that

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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49(6)(a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

While the landlord did not raise the defence of extenuating circumstances, the Supreme Court in *Furtado v. Maasanen*, 2020 BCSC 1340 (para. 32) held that

[. . .] if evidence of extenuating circumstances is presented, the adjudicator must consider it to determine whether those circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy.

The reason the landlord had to leave the rental unit was to attend a course in Vancouver that was previously to be held online. When he moved into the rental unit, he intended to take the course online, which would have allowed him to continue residing in the rental unit. However, due to circumstances beyond his control – that is, the college's decision to all of a sudden move the class from an online platform to in-person attendance – the landlord was prevented from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy. It is worth noting that the tenants did not dispute or otherwise call in question the landlord's testimony on this point, specifically in regard to the course being switched to in-class instruction and that the landlord had to go back to Vancouver to attend the course.

In applying subsection 51(3) of the Act, it is my finding that extenuating circumstances prevented the landlord from occupying the rental unit as stated in the Notice. As such, the landlord is excused from paying the tenants the amount otherwise required to be paid under subsection 51(2) of the Act. Accordingly, the tenants' claim for compensation is dismissed without leave to reapply.

In respect of the applicants' claim for recovery of the application filing fee, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants were not successful in this application their claim for recovery of the filing fee is dismissed.

Last, as an aside, while both parties provided considerable, often conflicting, testimony about who approached whom about whether the tenants could continue staying in the rental unit for higher rent, this particular issue is not ultimately relevant to the application for compensation under section 51(2) of the Act. If the tenants doubted the landlord's intentions in issuing the Notice, then their relief would have been to dispute the Notice under section 49(8) of the Act after receiving the Notice; a dispute of a Notice under this provision would then have addressed any issues concerning good faith.

### Conclusion

**The application is hereby dismissed, without leave to reapply.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 3, 2021

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Residential Tenancy Branch