



# 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") under the *Residential Tenancy Act* ("Act"). The Tenant applied for compensation of \$18,000.00 from the Landlord, related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 25, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenant, J.M., and an agent for the Landlord, X.Z. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. The Landlord had submitted a copy of an enduring Power of Attorney naming the Agent – also the Landlord's daughter - as the Landlord's attorney.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. I advised the Parties to let me know if the other Party raised a document that had not been provided. No one so advised me during the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the

Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2007, with a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit. The Parties agreed that the Tenant vacated the rental unit on May 31, 2021, and provided her forwarding address in writing to her former landlord, the former owner of the residential property.

The Tenant submitted a copy of the Two Month Notice that the Landlord had served to the Tenant's adult daughter, who lives with the Landlord. The Two Month Notice was signed and dated March 25, 2021, it has the rental unit address, it was served in person on March 25, 2021, with an effective vacancy date of June 1, 2021. It was served on the grounds that 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 a close family member intends in good faith to occupy the rental unit.

I asked the Tenant why I should award her with the monetary order that she seeks in her Application. The Tenant said:

Our house was listed and sold as a holding property. During the time it was listed, the realtor told us that it's in an area that is in the second phase of development in [the City]. This is going to put a number of high-density town homes on the spot where the house is. The realtor said whoever buys this property, it's for holding - develop it and make a lot of money.

The house sold for \$5.5 million. It is valued at \$10,000 by BC Assessment. It had

several problems while we lived there, but it was the devil we knew. We were surprised that the new purchasers were wanting to renovate and move in, when we know that this is slated to be torn down in two years.

They did not move in to the house, and the renovations they did were painting – very minor. Until after October 6<sup>th</sup>, the house was sitting empty. We had two months to leave, after living there for 14 years with chickens and pets. We applied to them to let us stay longer, but they said no.

The photos clearly show that the house was empty for months. Even photos of the garbage pile had the same garbage for months. There was nobody around. The neighbours said nobody's been around. They saw nobody until after I sent the first evidence package. Then everything changed. They showed up more, the same lights are on all the time. When we drive by in the morning – every single day - the same lights are always on; the garbage is never out. It's a shame that we had to move out of our home.

They have photos that show a moving truck and someone moving in. It was empty to the end of September. I have a text message from [the Agent] stating that they haven't moved in; they were busy, and it is hot. On Saturday, August 7<sup>th</sup>, on our way home, my daughter and I stopped in. We met a man who said he was the caretaker – cuts the grass, trims the plants. Nobody is living in the home, he said, because they have a beautiful house on the bluff. When I googled the house – it's a \$1.2 million dollar home. I can't believe that they're going to move from there into a house that leaks every time it rains hard. It has a rat problem that we struggled with for 10 years.

The Tenant submitted photographs dated June 7, 12, 16, 2021, which are clearly taken through the windows from outside of the residential property. They show an empty living room, views of kitchens, which are said to be empty; however, it was not possible to see in the kitchen drawers or cupboards, although there were no dishes or pots left out on the limited views of the counters provided. There were also photos of parts of the front hall, which did not have any sign of life.

The Tenant submitted an email she received from a neighbour of the residential property, J.A., which states:

Letter to whom it may concern  
[email addresses]

December 16, 2021

To Whom it may concern:

My previous neighbors, [Tenant(s)], had been residing at [rental unit address] until they were evicted in June.

To date, I find no reason that this lovely, kind and caring family were evicted from the home they were renting. The home was always well taken care of and kept neatly. Very quiet neighbors and very kind. They went above and beyond to be neighborly.

The home in question, same address as noted above, appeared vacant from June to December when I thought someone may have finally moved in. I had been informed recently, he was potentially the caretaker, an older gentleman.

There have been no vehicles in the front yard nor any indication that the home is occupied.

In my honest opinion, knowing this family, their kindness, and great care of the home, there is no reason for them to have been evicted.

Kind regards,  
[J.A.]  
[address]

The Agent said:

I think there are several points I do not agree with. First, this area is under a development plan, we heard from the neighbour. It just passed last year. I asked the neighbour – at least 10 years to go. They don't have any sewer system approved. It's not like it's a tear down in two years. That's not true. That's not true.

We moved in on October 4<sup>th</sup>, because this is my parents' house. I have my own house. They want to live by themselves in this house. That's the reason they gave the notice.

The Agent also testified that they did not have a lot of time to view the house before having to make a decision on whether to purchase it or not. She said that the Tenant

declined to allow them to view the house again after they bought it, as they said the Tenant told them she was too busy preparing to move.

Once the Tenant moved out, the Landlord and the Agent were able to view the vacant property, and they determined that it needed some “basic renovations”.

The Agent continued:

In middle of June, we moved two sofas, one bed for my husband and I working in there cleaning and renovating – painting the house. We did some preparation. She said after we received the package, I started acting – no, we moved stuff in, in June. I received her package in July. It's not after I received her package that we started to act. We did just whatever according to our pace.

I'm 58, my husband is 60, my parents are in their 80s. We don't want to hire other people, because we don't want people from outside our pandemic bubble.

At the end of June, it was very hot weather – a record breaking heat wave attacked our area. I think June 27<sup>th</sup> or 28<sup>th</sup> it was 40 degrees [the Tenant agreed]. My husband had some health issues. We have this emergency record of our visit in the hospital. He broke his skin in knees by working in backyard – inflammation .... The nurse – he found his heart rate was very low – 33 or 37 beats per minute: 'Now your leg is not the big problem, it's your heart'. They keep him for four hours to monitor his heart. I want to explain, we moved in on October 4<sup>th</sup> for a reason – it depends on our capacity.

If we start to act after receiving her package, we should have just moved in no matter the weather, and the pandemic. All these reasons – my husband's heart. Secondly, my parents are – I want them in my house for a while, because it has [air conditioning].

I didn't lie to her. I tried to be nice to her. You have mail.... I always send a notice to her about mail. I said with the hot weather and busy schedule – my parents have to be taken care of by me. I told her we would move in by the end of September. I called the moving companies, and they were all fully booked by the end of the month. 'But if you don't have to move in a certain time, how about October?' They booked me on October 4<sup>th</sup>. Since then, my parents live there. The pictures [of the] empty [house] was in July, because we didn't move in. But there is some reason there.

The Tenant responded:

I, personally, find it incredulous that someone would spend \$5.5 million on a home that was advertised without any photos of interiors. And it was advertised as five-bedroom, three-bathroom home, but there's only two bathrooms. Bought it without an inspection? That I found incredulous....

Yes, we had a heat wave for four or five days, but they said they wanted it for southern exposure. We have fans. A window is a must in the back bedroom. I know that they did some painting inside, and some cleaning, but it wasn't that dirty when we moved out. I have painted that house over the 14 years, while living in it myself.

The Tenant encouraged me to investigate a development that is planned for the area in which the residential property sits. However, it is the Parties' obligation to provide whatever evidence they want me to view to the RTB and the other Party. I cannot find evidence that both Parties have not had a chance to review, as that would be administratively unfair to the other Party.

In her closing statement, the Agent said:

We didn't hire a surveyor. For the house inspection, you can check the message from the seller's agent. Not easy to do inspection of the house while people were living there. When we decide to buy this house; the realtor only gave us a few days and they had a backup offer. We don't have time to do the inspection, but we really wanted the house.

For [the development], I talked to the next-door neighbour. They said it's a long way to go. There are so many decent houses, mansions in that area – new - it's not as she says that it will be like the whole area torn down. The sewer's not even in that area yet – that will take four to five years, and at least 10 years for the rest.

She is giving you the wrong impression that it's a tear-down. It's my parents' home. They like the yard and the area very much. It is only her own judgment, it's not the truth. My last statement is my parents really like the house. They moved in, not as early as [the Tenant] expected, but that's because we are weak – fighting the heat, the pandemic - we are old people; we have done our best moving in on October 4<sup>th</sup>. We have done our best.

The Agent submitted a statement she wrote about the circumstances of purchasing and moving into the residential property. The Agent's comments included the following:

After my parents possessed the house on June 3, 2021, we checked the house carefully and found although it is a quite functional, solid, lovely and cozy house, just as the tenant said that it is quite old and obviously not well maintained. So we want to do something before my parents move in to make my parents live more comfortable.

But because the pandemic, as I mentioned in previous paragraph my parents are senior and vulnerable people to Covid-19, my husband and I are also 60 and 58 years old, after comprehensive evaluation and consideration about pandemic situation, my parents' budget, etc., also in order to reduce our contact with people outside the family bubble, we decided to help with my parents to do some basic maintenance, repair and deep cleaning by ourselves before we move them in the house.

In June we moved some furniture into the house. Because of the pandemic, we didn't hire moving company, we asked one of our friends used his truck helped with moving some simple furniture and stuff of my parents into the house to prepare for our working and stay around there.

During the summer, my husband and I spent a lot of time working on the property. My husband fixed some rotten wood fixtures and did some other repairs. We deep cleaned the house inside and out, from floor to ceiling. My husband cleaned the roof and gutters. My husband power washed the exterior of the house and patio. He fixed the fallen fence panels. He also repainted the whole house both interior and exterior and changed the colour of the walls according to my parents preference. We added some new window curtains in front. We also did pest repellent for the house. The conditions of the house became much better than before. For a couple in our age, my husband and I have done our best to get the projects been finished as early as possible especially under the extremely hot summer weather plus the pandemic chaos. Also during the whole summer, we had one of our friends Mr. [D.F.] taking care of the garden regularly for my parents and helped with watch the house because he lives in the same street.

In October 4, 2021, my parents moved in the house. We hired a moving company for the move. We could be able to help my parents moving in earlier in

summer, but because BC experienced abnormal record breaking heat wave during the summer months, I read many news reporting about senior citizens dying from the heat wave because their house lacked proper air conditioning system, I became more concerned about my parents' health especially my father who suffers from chronic heart diseases. Further, since July 1, 2021, the pandemic has worsened. And also, because my husband and I were working on the property, it was not convenient for them to live in at the same time. Therefore, I thought it would be better for my parents to stay in my air- conditioned home until the weather has cooled and more people are vaccinated.

In [the Tenant's] evidence she showed the texts between she and me in September, I also told her we haven't moved in due to the hot weather and we will move in by the end of September. I called moving company late of September try to book a date. But the moving company told me they were extremely busy and fully booked around the end of month, so we booked October 4, 2021.

My parents can't drive and they don't own any cars. That is why the neighbour don't see many traffic and car parking around their house. Before pandemic, they always take public transportation to do grocery shopping, go to the South Surrey Indoor Pool to exercise and meet with their friends, etc. Since the pandemic, their daily life has been disrupted a lot. For a quite long period of time, they haven't taken the buses and done their own grocery shopping. Instead my husband and I give them rides whenever they need. And I have done most of the grocery shopping for them since the pandemic.

. . .

My parents really like the area and the house, they like the big back yard facing south, so they can do gardening in the summer. And they like the location which is near [Aquatic Centre]. They wish the pandemic could end sooner so they can back to their normal life to meet with their friends at the swimming pool or at home. For a senior couple like my parents, last two years have been very difficult time already. They can't meet with their friends and they can't go to many places they want to go, they can't hire any helpers in their house, and they have suspended almost all their social activities. The claim of compensation to the applicants has become another nightmare for them and they are very upset and stressful about this. As their daughter I am also very sad and frustrated too.

. . .



## Analysis

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

Section 67 of the Act establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Before the Parties testified, I advised them of how I would analyzed evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

Section 51(2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice, the Landlord indicated that the Landlord or a close family member, intends to occupy the rental unit.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member the rental unit sat empty for over four months. The Tenant provided photographs of the empty residential property, but the Agent testified that they moved pieces of furniture into the residential property in June 2021, in the month after the Tenant vacated the unit. The Agent said that she and her husband stayed there in order to prepare it for her parents, the Landlords.

As explained in Policy Guideline 50 ("PG #50"), "Compensation for Ending a Tenancy":

### **C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS**

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

#### **Reasonable Period**

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected

circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. 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, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty. .

[emphasis added]

I find on a balance of probabilities that the Landlord did not violate the Act given the time it took them to move into the residential property in these circumstances. I find the undisputed evidence before me is that the Landlord moved into the residential property on October 4, 2021. I find this is a little over four months from when the Tenant vacated the rental unit. I note that this is despite the Tenant's evidence from her neighbour who said she did not see anyone living in the residential property until at least December.

I find that the Agent provided sufficient evidence that the Landlord had extenuating circumstances that prevented them from moving in sooner. The Agent indicated that she and her husband wanted to clean the residential property for the Landlord, which is especially important during the pandemic, and given that the Landlord and her husband are in their 80s.

Further, the undisputed evidence before me was that the Province had a record-breaking heat wave in the summer, which made it dangerous for vulnerable people such as seniors to be somewhere without air conditioning. I find based on common sense and ordinary human experience that it would also be difficult for anyone to clean, paint or move during this weather without air conditioning. I find that the cleaning and minor renovations that the Agent and her husband did for the Landlord, along with the heat wave, rendered the four-month delay a reasonable period within which to accomplish the stated purpose for ending the tenancy. I find this set of circumstances equates to the extenuating factors set out in PG #50, which makes a delay in moving in to be acceptable.

Accordingly, I therefore, dismiss the Tenant's claim without leave to reapply. Further,

given that the Tenant is unsuccessful in her Application, I decline to award her with recovery of the \$100.00 Application filing fee.

Conclusion

The Tenant was unsuccessful in her Application, as the Landlord provided sufficient evidence to establish that they had extenuating circumstances that prevented them from moving in immediately after the end of the tenancy.

The Tenant's Application is dismissed wholly without leave to reapply.

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: January 13, 2022

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Residential Tenancy Branch