



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on June 13, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Compensation from the Landlord B.T. related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 6, 2022, and was attended by the Tenant A.B., the Landlords B. T. and I.T. and legal counsel for the Landlords, A.S. All testimony provided was affirmed. The parties and their agent(s) were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence intended to be relied on by the applicant(s) at the hearing. As the Landlord B.T. acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, which includes the Application and

the Notice of Hearing, as well as the documentary evidence before me from the Tenants, and raised no concerns with regards to the date or method of service, I therefore find that they were sufficiently served for the purposes of the *Act* and the Rules of Procedure. The Rules of Procedure also state that the applicant(s) must be served with a copy of the documentary evidence intended to be relied on by the respondent(s) at the hearing. As the Tenant acknowledged receipt of the documentary evidence before me from the Landlords on their own behalf and behalf of the other tenants, and raised no concerns with regards to the date or method of service, I therefore find that the Tenants were sufficiently served for the purposes of the *Act* and the Rules of Procedure. Based on the above, the hearing proceeded as scheduled and I accepted all of the documentary evidence before me from the parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

#### Issue(s) to be Decided

Are the Tenants entitled to compensation from the Landlord B.T. related to a Notice to End Tenancy for Landlord's Use of Property?

Are the Tenants entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on December 1, 2020, and was set to end on April 30, 2021. Option D was chosen, which states that at the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term. Although option E, which states that the tenant must vacate the rental unit at the end of the fixed term if the circumstances prescribed in section 13.1 of the *Act* apply, was not selected, the parties placed their initials in a section intended for use by parties who selected option E.

At the hearing the parties disputed whether the tenancy agreement was meant to have a vacate clause under section E or was to continue on a month-to-month basis as set out in Section D. The Landlords and their legal counsel argued that there was simply a clerical error when filling out the tenancy agreement, and that the parties had all understood that a vacate clause applied, which is why everyone placed their initials in the section relation to option E. The Tenant disagreed, stating that no such understanding existed, and that the tenancy agreement was clearly to continue on a month-to-month basis after the end of the fixed term as shown in the tenancy agreement, as option D was selected, not option E.

The tenancy agreement states that rent in the amount of \$2,950.00 was due on the first day of each month, which the parties agreed was correct, and that a \$2,950.00 security deposit was required, which the parties agreed was paid and returned to the Tenants when the tenancy ended on May 1, 2020.

The parties agreed that the Tenants were served with the Two Month Notice on March 31, 2021, and that the tenancy subsequently ended on May 1, 2021 as a result of the Two Month Notice, after the Tenants exercised their right under section 50(1) of the *Act*. The parties also agreed that the Tenants had received one month's free rent as required by section 51(1) of the *Act*.

The Two Month Notice in the documentary evidence before me is in writing on the current version of the form, contains the address for the rental unit, is signed and dated March 30, 2021, and has an effective date of May 31, 2021. The Two Month Notice states that the reason the tenancy is ending is because the rental unit will be occupied by the landlord, or the landlord's close family member. From the list of persons who will be occupying the rental unit for the purposes of section 49 of the *Act*, the option for the father or mother of the landlord or the landlord's spouse was chosen. The other available options were the landlord or the landlord's spouse, and the child of the landlord or the landlord's spouse.

The Tenant stated that they are seeking 12 months compensation pursuant to section 51(2) of the *Act*, as instead of moving their parents into the rental unit, the Landlords re-rented it on a short-term rental site. The Tenants provided a screen short of the listing for my review and consideration. The Tenants stated that there is a review on the site, a copy of which was provided for my consideration, which was published by the site on July 7, 2021, for a stay that occurred in July of 2021, according to the review. Further to this, the Tenant stated that they also created an account for the short-term rental site under another name and inquired about booking the rental unit for the last

week of September 2021, and the second week of October 2021, in an attempt to determine if the Landlord was in fact using the rental unit for a purpose other than the purpose stated for ending the tenancy in the Two Month Notice. The Tenant stated that the Landlord B.T. advised them that they had availability, and a copy of this written conversation was submitted by the Tenants.

The Tenant stated that both the stay in July of 2021 which is shown in the review on the short-term rental site and at least one of the dates they inquired about renting the unit on the short-term rental site fall within 6 months after the effective date of the Two Month Notice, which demonstrates that the Landlords were not using the rental unit for the stated purpose. The parties agreed that B.T.'s parents were present when the Tenants vacated the rental unit on May 1, 2021, and the Tenant stated that they observed B.T.'s mother having extreme difficulty going up the stairs, which gave them cause for concern that the Two Month Notice may not have been served in good faith by the Landlords, as the rental unit is a three story townhouse with many stairs. The Tenant stated that this is when they began to suspect that the Landlords might not use the rental unit for the purposes stated on the Two Month Notice.

Legal counsel for the Landlords provided the vast majority of the submissions and responses on behalf of the Landlords, which are also detailed in an 8 page written document that was read during the hearing. Legal counsel for the Landlords provided a brief history of use of the property prior to the start of the tenancy, stating that it had historically been used by the Landlords and their family, with the occasional short-term rental. Legal counsel stated that during the pandemic, the Landlords chose to rent the unit out under a tenancy agreement, due to travel restrictions, but always intended to continue using the rental unit in the previous manner after the end of the tenancy. As a result, they stated that two bookings made prior to the start of the tenancy on a short-term rental site for July and August of 2021, were not cancelled, as the Landlords believed that the tenancy agreement had a move-out clause for April 30, 2021. Legal counsel stated that they attempted to obtain confirmation of when these bookings were made on behalf of their clients, but were unable to get such confirmation from the short-term rental site, given the length of time that had passed. Legal counsel stated that the Landlords never removed the rental property from the rental site, but were not taking bookings during the tenancy. The Tenant stated that they do not believe this to be accurate, as they were checking short-term rental sites after the end of the tenancy, and the listing did not appear until approximately 3-4 weeks after the end of their tenancy.

Legal counsel stated that B.T.'s parents are elderly and ordinarily live in an apartment in a larger nearby city. Legal counsel stated that during the pandemic, the Landlords

became increasingly worried about the COVID risk to B.T.'s parents, due to the size of the city and the nature of apartment buildings, and decided to move B.T.'s parents into the rental unit for the foreseeable future, once the tenancy had ended. Legal counsel stated that when they were informed by the Tenants that there was no move-out clause in the tenancy agreement and a proper notice to end tenancy would need to be served to end the tenancy, the Landlords served the Two Month Notice.

Legal counsel stated that B.T.'s parents moved into the rental unit on May 1, 2021, after the Tenants vacated, and that throughout May and June of 2021, B.T.'s mother's health and mobility rapidly deteriorated. Two doctor's notes were submitted for my review and consideration in support of this. The Landlords and their legal counsel stated that although B.T.'s mother had suffered from mobility issues for a period of time, given her age, this was not unusual and that prior to the above noted deterioration in her health, she was reasonably mobile. Legal counsel stated that B.T.'s parents returned to their regular home in the nearby city on July 1, 2021, and that although this was intended to be a temporary measure until she was able to start taking the stair again, her health deteriorated to the point where she now requires a walker full-time, is awaiting a hip replacement, and cannot take stairs. As a result, B.T.'s mother never returned to the rental unit as their apartment building has an elevator and their apartment has no stairs. Legal counsel stated that although B.T.'s father returned to the rental unit for three days in July, ultimately they also returned to live at their own apartment full-time.

When I asked why B.T.'s parents did not attend the hearing to provide testimony about their residency at the rental unit or submit written statements for my review, legal counsel stated that they do not have a good command of English and that hearsay evidence about this from the Landlords is permitted. In support of their position that B.T.'s parents occupied the rental unit, the Landlords and their legal counsel submitted two pictures, a self-authored calendar showing the dates the rental unit was allegedly occupied by B.T.'s parents, short-term rental guests, B.T.'s father, and B.T. between May 1, 2021, and November 30, 2021, as well as bank records for B.T. which they argued show that B.T. was assisting their parents at the rental unit with shopping and errands.

Legal counsel stated that at all times the Landlords had acted in good faith with regards to the Two Month Notice and argued that as B.T.'s parent moved into the rental unit on May 1, 2021, and could not continue to reside there due to B.T.'s mother's unforeseeable and rapid health and mobility decline, extenuating circumstances therefore apply pursuant to section 51(3) of the Act and therefore the Tenants should not be entitled to 12 months compensation. In the alternative, legal counsel argued that

B.T.'s own occupancy of the rental unit for various periods between August-November 2021, as shown in the Landlords' self-authored calendar, should constitute use of the property in accordance with the Two Month Notice and therefore the Tenants should also not be entitled to 12 months compensation.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed between the parties. I am also satisfied that the Tenants were served with a Two Month Notice pursuant to section 49(3) of the *Act* on March 31, 2021, and that the tenancy ended as a result of the Two Month Notice on May 1, 2021, after the Tenants exercised their rights to end the tenancy early upon 10 days written notice, pursuant to section 50(1) of the *Act*. I am also satisfied that the Tenants received the required compensation set out under section 51(1) of the *Act*, and that the Tenants' security deposit had been returned, as the parties agreed at the hearing that this was the case.

Section 51(2) of the *Act* states that 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:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- 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.

Section 51(3) of the *Act* 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:

- accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- 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.

The parties provided conflicting and equally compelling affirmed testimony and submissions regarding whether or not the Two Month Notice was issued in good faith, whether the Landlords' parents moved into the rental unit, and whether the Landlords had used the rental unit for the stated purpose and for the required period of time. As a result, I turned to the documentary evidence before me to determine whether the Landlords discharged the burden of proof incumbent upon them to satisfy me on a balance of probabilities that either their parents occupied the rental unit for residential purposes within a reasonable period of time after the effective date of the Two Month Notice, and for the required period or time, and/or that extenuating circumstances under section 51(3) of the *Act* apply. For the following reasons, I am not satisfied that they did.

Although the Landlords stated that their parents moved into the rental unit on May 1, 2021, the same day that the Tenants moved out, no direct evidence was before me from B.T.'s parents, who were the alleged occupants of the rental unit. Although I do not find this to be determinative or fatal to the Landlord's claim, I find it unusual, even given that B.M.'s parents do not speak English as a first language, that there is no direct evidence from them or any corroboratory evidence that they moved in, such as utility or other bills in their name showing the rental unit address. The Landlords provided two photographs which I am satisfied show B.T.'s parents in the rental unit. However, the date stamps on the photographs do not contain years, and as a result, I am not satisfied that they establish that B.T.'s parents were in the rental unit after the Tenants vacated on May 1, 2021. I am also not satisfied that they establish that B.T.'s parents were residing in the rental unit, rather than simply visiting it, as they show only B.T.'s parents playing a boardgame on a couch and B.T.'s father reading a newspaper in front of a bedroom window. The Landlords submitted a self-authored calendar showing the dates they allege B.T.'s parents resided in the rental unit between May 1, 2021 – June 30, 2021, as well as the dates that the rental unit was rented out through a short-term rental site in July and August of 2021, and the dates the Landlords or only B.T.'s father used the rental unit between July 11, 2021 – October 30, 2021. However, I find this self-authored documentary evidence no more compelling than the Landlords' affirmed testimony at the hearing, as it is simply a re-statement of their affirmed testimony, in another format, rather than independent and reliable corroboratory evidence. Finally, although the Landlords submitted bank records showing transactions in the community in which the rental unit is located throughout the months of May 2021 – October 2021, these bank statements are for the Landlord B.T., not B.T.'s parents. As a result, I find that they satisfy me only that B.T. was in that community for at least some time during the above noted months, not that B.T.'s parents were in that community or that B.T.'s parents were occupying the rental unit for residential purposes during that time, which is the legal test to me set by the Landlords.

Although the Landlords and their Legal Counsel stated at the hearing that these bank records establish that B.T. was helping their parents buy groceries and prescriptions as they do not own their own vehicle and require B.T.'s regular assistance due to their ages, mobility issues, and lack of proficiency with English, I am not satisfied this is the case, as nothing in the bank statements would corroborate that and there is no independent corroborating evidence, such as prescription receipts, to establish that the purchases made were for anyone other than B.T.

Further to the above, I also find the Landlords' testimony that B.T.'s parents intended to reside in the rental unit for six (6) months beginning on May 1, 2021, incongruous with their own documentary evidence and arguments as set out below. Although the Landlords stated that at the time the Two Month Notice was served on March 31, 2021, and the time the Tenants vacated the rental unit early on May 1, 2021, B.T.'s parents intended to reside in the rental unit for a period of not less than 6 months, they acknowledged that the rental unit was rented out through a short-term rental site between July 1, 2021-July 3, 2021, July 19, 2021 – July 24, 2021, and August 6, 2021 – August 11, 2021. Although the Landlords and their legal counsel argued that these bookings were made prior to entering into the tenancy agreement, and therefore cannot be taken as evidence that the Landlords did not act in good faith when issuing the Two Month Notice, as the rental unit has always previously been used for their family and the occasional short-term rental, I disagree. It makes no sense to me at all that these bookings would not have been cancelled by the Landlords when they entered into the tenancy agreement, when they subsequently served the Two Month Notice on the Tenants, or when B.T.'s parents allegedly moved into the rental unit on May 1, 2021, if the B.T.'s parents were truly intending to occupy the rental unit in compliance with the Act and the Two Month Notice, as argued by the Landlord and their legal counsel.

As the short-term bookings fall within the period of time during which B.T.'s parents were allegedly going to be occupying the rental unit for residential purposes according to the Two Month Notice, it does not stand to reason that they Landlords did not cancel these bookings, unless their parents either never intended to reside in the rental unit, or only intended to reside in it for a period of less than six months. I do not find it reasonable to conclude that B.T.'s parents intended to reside in the rental unit while it was also rented out for periods of between 3 and 6 days at a time, especially given the Landlords' testimony that they moved their parents there to avoid COVID risks associated with living in an apartment building, nor do I find that use of the rental unit as a short-term rental for any duration during the six (6) month period during which B.T.'s parents were to be residing there according to the Two Month Notice, meets the



definition of occupancy for residential purposes in accordance with section 49 and 51 of the *Act*.

Further to this, the Landlords and their legal counsel acknowledged at various points throughout the hearing and in the documentary evidence before me, that at the time the tenancy agreement was entered into, the Landlord believed that there was a valid move-out clause in place and that they had always intended to continue using the rental unit as it had been used prior to the start of the tenancy (part short-term rental and part family use), once the tenancy had ended. Further to this, I find it more than coincidental and highly suspect that the Landlords alleged that their parents moved out of the rental unit on June 30, 2021/July 1, 2021, due only to B.T.'s mother's mobility issues, given that the first short-term rental of the rental unit took place on July 1, 2021, and was booked prior to the start of the tenancy according to the Landlords and their legal counsel. In a text message conversation between the Landlord B.T. and the Tenant R.N., dated March 31, 2021, the Landlord states "Also wanted to remind that April is last month for you guys to stay. Just want to make sure you remember and will be planning for moving out on April 30<sup>th</sup>". When the Tenant asked for an extension, the Landlord responded with "I have other plans with this apartment" and therefore an extension was not possible.

I find that the above noted text message conversation is consistent with the position of the Landlords that they believed the tenancy was to end on April 30, 2021, when the fixed-term of the tenancy agreement expired, and that they intended to continue using the rental unit for periodic short-term rentals. This is bolstered by the fact that prior to the start of the tenancy, the Landlords accepted a short-term booking for the rental unit for after the end of the fixed term of the tenancy agreement, never cancelled it after the tenancy agreement was entered into, the Two Month Notice was served, or B.T.'s parents allegedly moved in on May 1, 2021, and in fact, the Landlords followed through with the bookings. I am satisfied by the documentary evidence before me for consideration that it was not until the Tenants notified that Landlords by text that the tenancy agreement did not end by law at the end of the fixed-term and provided them with information on how to end the tenancy if they wished to do so, that the Landlords expressed that they planned to move their parents in.

Based on the above, I am satisfied on a balance of probabilities that the Landlords always intended to rent the unit out as they previously had on short-term rental sites after the end of the tenancy, and that upon discovering that the tenancy was not going to end on April 30, 2021, at the end of the fixed-term, and that ending the tenancy for this purpose was not permissible by the *Act*, they instead issued the Two Month Notice

without a good faith intention of actually having their parents occupy the rental unit for residential purposes for at least six months, beginning within a reasonable time after the effective date of the Two Month Notice.

As I have found that the Landlords have failed to satisfy me on a balance of probabilities that B.T.'s parents ever occupied the rental unit for residential purposes after the tenancy ended, or that they ever intended to occupy the rental unit for residential purposes for a period of six (6) months after the tenancy ended, I therefore dismiss the Landlords' argument that extenuating circumstances apply, pursuant to section 51(3) of the *Act*. Although I accept that B.T.'s mother's health, specifically her mobility, declined between May and June of 2021, as set out in two separate Doctor's letters before me for consideration, I do not accept that either of B.T.'s parents moved out of the rental unit on June 30, 2021, as a result of B.T.'s mother's mobility issues, as alleged by the Landlord's and their Legal Counsel, as I am not satisfied they ever moved in or had the intention to move-in.

Although Legal Counsel for the Landlords argued that the B.T.'s own continued use of the rental unit should constitute compliance with the grounds for ending the tenancy stated in the Two Month Notice, I disagree. There is a separate ground and box for ending a tenancy for landlord's own use on the Two Month Notice to End Tenancy for Landlord's Use form (the RTB-32), which was not checked off. Further to this, Residential Tenancy Policy Guideline (Policy Guideline) #24 clearly states that another purpose cannot be substituted for the purpose set out on the notice to end tenancy, even if this other purpose would also have provided a valid reason for ending the tenancy. As a result, even though the Landlords could have ended the tenancy for their own use, I find that they did not end the tenancy for that purpose on the Two Month Notice and that it was therefore not open to the Landlords to change the use of the rental unit from use by their parents to their own use, once the Two Month Notice had been issued, unless extenuating circumstances under section 51(1) of the *Act* applied, which I have already found they did not. As a result, I do not find that the B.T.'s own use of the rental unit periodically after the tenancy ended, in conjunction with the previously mentioned short-term rentals, constitutes use of the rental unit for the stated purpose set out in the Two Month Notice.

Based on the above, I therefore grant the Tenants' claim for \$35,400.00 in compensation, which represents 12 times the monthly rent of \$2,950.00, pursuant to section 51(1.2)(2) of the *Act*. As the Tenants were successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$34,600.00, and I order the Landlord B.T. to pay this amount to the Tenants.

Conclusion

I grant the Tenants' Application seeking compensation pursuant to section 51(2) of the *Act* and recovery of the filing fee.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$35,500.00**. The Tenants are provided with this Order in the above terms and the Landlord B.T. must be served with this Order as soon as possible. Should the Landlord B.T. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 19, 2022

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Residential Tenancy Branch