



# 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 for Dispute Resolution (the Application) that was filed by the Tenant on July 7, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation from the Purchasers related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice).

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 24, 2022, and was attended by the Tenant, the Tenant's Advocate J.A. (the Advocate) and the agent for the Purchasers J.D. (the Agent). All testimony provided was affirmed. The parties 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. The Agent acknowledged that the Purchasers had received the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, and the documentary evidence before me for consideration from the Tenant, on January 7, 2022; however, they argued that it was received only 11 business days before the hearing. Rule 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on by the

applicant(s) at the hearing must be received by the respondent(s) and the Residential Tenancy Branch (the Branch) directly or through a Service BC Office not less than 14 days before the hearing. As January 7, 2022, was more than 14 days before the date of the hearing, I find that the Purchasers were served in accordance with rule 3.14, as the time period set out in rule 3.14 is not in business days. I therefore find that the Purchasers 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 the Tenant's documentary evidence for consideration.

Although the Tenant and Advocate acknowledged receipt of the Purchasers' documentary evidence, the parties agreed that it was personally served on the Tenant on January 20, 2022, only 2 days before the hearing. Despite the fact that this date of service clearly does not comply with the timeline set out under rule 3.15 of the Rules of Procedure, which requires respondents to serve applicants with their evidence not less than seven days before the hearing, the Tenant and Advocate agreed to its acceptance for consideration as it contained only the authorization for the Agent to act on the Purchasers' behalf, evidence that was already contained in the Tenant's own documentary evidence package(s), a copy of Residential Tenancy Policy Guideline (Policy Guideline) #2A, which is available to the public, and a copy of an MLS listing for the property from prior to the issuance of the Two Month Notice. Based on the above, I accepted all of the documentary evidence before me from the Purchasers 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

Is the Tenant entitled to compensation from the Purchasers related to a Notice to End Tenancy for Landlord's Use of Property?

#### Background and Evidence

The parties were agreed that at the time the Two Month Notice was served by the Previous Landlord on the Tenant, a periodic (month-to-month) tenancy existed, and that

rent in the amount of \$780.00 was due on the first day of each month.

The Agent stated that the Purchasers, who are family members, purchased the property from the Previous Landlord(s), so that they could move in together. As a result, the Agent stated that the Purchasers completed the Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession (the Buyers Notice), requesting that the Previous Landlord(s) serve the Tenant with the Two Month Notice. A copy of the Buyers Notice was submitted for my review and consideration which states that the Previous Landlord(s) and the Purchasers have entered into a Contract of Purchase and Sale dated December 15, 2019, all conditions for purchase and sale have been satisfied, and either the Purchasers or their close family member(s) intend in good faith to occupy the property. As a result, it states that the Purchasers are requesting that the Previous Landlord(s) issue a Two Month Notice to End Tenancy for Landlord's Use of Property in accordance with section 49 of the *Act*, with an effective date of March 31, 2020.

There was no disagreement between the parties that the property was sold, and that on or about January 13, 2020, the Tenant was served with the Two Month Notice for the above noted purpose. The Advocate stated that the tenancy subsequently ended on February 28, 2020, as a result of the Two Month Notice, after the Tenant exercised their right under section 50(1) of the *Act* to end their tenancy early.

The Two Month Notice in the documentary evidence before me is in writing on a previous version of the approved form, contains the address for the rental unit, is signed and dated January 13, 2020, and has an effective date of March 31, 2020. The Two Month Notice states that the reason the tenancy is ending is because 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.

The parties agreed that the rental unit is located in a single-family home comprised of the following units:

- A 4 bedroom main unit upstairs;
- A 1 bedroom basement suite; and
- A 2 bedroom basement suite, referred to as the rental unit in this decision, as this is the suite in which the Tenant resided during the tenancy.

The Advocate stated that the Tenant is seeking 12 months compensation pursuant to section 51(2) of the *Act*, as instead of occupying the rental unit themselves, or having it occupied by close family members, the Purchasers appear to have re-rented it. The

Tenant provided a video that they and the Advocate argue shows that the Purchasers re-rented the rental unit, rather than using it for the stated purpose set out in the Two Month Notice. The video shows the Advocate and a person identified at the hearing as L.J., attending a residence, knocking on two basement doors, and speaking with the occupants. During the video the Advocate and L.J. ask if the people who answer the doors are renting, and they say yes. They also state that they have been residing there for several months. At the hearing the Advocate stated that the video was taken in August of 2020, which was within 6 months after the effective date of the Two Month Notice.

The Agent stated that on March 31, 2021, the father of the purchaser N.K. (the Father) and N.K.'s brother (the Brother), moved into the rental unit, where they still reside. Although the Agent repeatedly referred to the Father as a visitor to Canada, throughout the course of the hearing it became apparent that the Father is not in fact a visitor, but rather a person with status in Canada who was sponsored by family members under a 10 year sponsorship agreement. The Agent stated that the person who answered the door of the rental unit in the video was the Brother's wife, who moved into the rental unit several months later from another country. The Agent stated that The Brother and his wife pay rent, to help pay for the mortgage, but that the Father, who meets the definition of a close family member of the purchaser N.K. and their spouse C.S., who is the other Purchaser, does not pay rent. The Agent stated that N.K.'s sister in-law is a relative newcomer to Canada, and as such, English is not their first language. The Agent stated that N.K.'s sister in law was not being untruthful when she stated in the video that they pay rent, and that because they did not understand the nature of the questions being asked, or why they were being asked, she did not identify that other people reside in the rental unit with her, or their names. The Agent stated that if she had been asked who resided there, she would have provided that information, and it would be clear that at least one occupant, the Father, meets the definition of a close family member.

The Agent acknowledged that there was a tenant in the adjacent rental unit, which did not form part of the Tenant's tenancy agreement, but stated that the previous occupant of that rental unit was not served with a Two Month Notice as they were already planning to vacate, and as a result, there was no obligation for the Purchasers or their close family members to occupy that unit. Further to this, they stated that the Purchasers had always planned to rent out that rental unit as they only needed the main upstairs unit and the larger of the two basement suites for their own use and the use of their family. The Tenant and the Advocate disputed the Agent's testimony that the tenant of the other rental unit was not served with a Two Month Notice.

When I asked if the Agent wanted to point to any documentary or other evidence, or to call any witnesses in support of their position that the Purchasers had complied with the stated purpose for ending the tenancy set out in the Two Month Notice, they stated they did not. They stated that they were unable to provide any documentary evidence that the Father resides in the rental unit as that would breach the *Immigration and Refugee Protection Act*. I asked the Agent how providing proof of residency for a Residential Tenancy Branch hearing was a violation of the *Immigration and Refugee Protection Act*, and the Agent stated that as the Father is under a sponsorship agreement, their sponsors are financially responsible for their living costs for 10 years, and therefore they cannot pay rent and do not have a tenancy agreement. The Agent stated that sponsorship documents are not updated with residency information and as a result, they list his former residence, which was sold by the Purchasers to buy the single family home in which the rental unit is located. Although the Agent stated that the Father has a cell phone, and therefore might have a bill in their name and the Brother's name showing the rental unit address, this was not submitted for my review and consideration.

In response to the above, the Advocate stated that the Purchasers have provided no documentary evidence to show that either they, or their close family members, occupied the rental unit within a reasonable period of time after either the end of the tenancy or the effective date of the Two Month Notice, or that the Purchasers or their close family members resided there for at least 6 months. The Advocate also pointed out that neither the Purchasers, nor any of the family members alleged to be living in the rental unit by the Agent, appeared to provide testimony. As a result, the Advocate argued that the Purchasers simply have not met the burden of proof incumbent upon them to establish that they used the rental unit for the stated purpose, as required, and therefore the Tenant was entitled to \$9,360.00, which represents twelve times the monthly rent payable under the tenancy agreement.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed. I am also satisfied that the Tenant was served with a Two Month Notice pursuant to section 49(5) of the *Act* on or about January 13, 2020, by the Previous Landlord(s) at the written request of the Purchasers, and that the tenancy ended as a result of the Two Month Notice on February 28, 2020, after the Tenant exercised their rights to end the tenancy early pursuant to section 50(1) of the *Act*.

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.

The parties provided conflicting and equally compelling affirmed testimony and submissions regarding whether or not the Purchasers or their close family members moved into the rental unit within a reasonable time after the effective date of the Two Month Notice, and subsequently resided there for a duration of at least 6 months. As a result, I turned to the documentary evidence before me to determine whether the Purchasers discharged the burden of proof incumbent upon them to satisfy me that they complied with the stated purpose for ending the tenancy set out in the Two Month Notice, within and for the required periods of time. For the following reasons, I am not satisfied that they did.

Although the Agent stated that the Father, who meets the definition of a close family member, moved into the rental unit on March 31, 2020, no direct evidence was before me from the Purchasers or the Father confirming this. Although I do not find this to be determinative or fatal to the Purchasers' position on its own, I find it unusual and concerning. I also find it concerning that although the Agent alleges that the Father has resided continuously in the rental unit since March 31, 2020, a period which currently represents almost two years, they state that they were not able to provide any documentary evidence to corroborate this. Although the Agent argued that providing proof of the Father's residency in the rental unit would be a breach of the *Immigration and Refugee Protection Act* due to his sponsorship agreement, I do not accept this argument. I find that the issue of the Father's residency in the rental unit is an entirely separate issue from whether or he pays rent to reside there and if so, who is responsible for that payment in accordance with the sponsorship agreement. As a result, I am satisfied that it was not only possible but reasonable to expect that the Purchasers' provide some form of corroboratory evidence that the Father occupied the rental unit within a reasonable period of time after the effective date of the Two Month Notice and for at least 6 months duration thereafter, and that they were not prevented from doing so due to the Father's sponsorship agreement.

The Tenant and their Advocate presented a video which I am satisfied shows that at least one person, who is neither the Father nor another person who meets the definition of a close family member of the Purchasers under the *Act*, resided in the rental unit and paid rent to live there, within 6 months after the effective date of the Two Month Notice. As a result, and given the lack of evidence, documentary or otherwise, before me from the Purchasers to establish that the Purchasers, the Father, or another person who meets the definition of a close family member of the Purchasers, occupied the rental unit within a reasonable time after March 31, 2020, which is the effective date of the Two Month Notice, and resided there for a duration of at least 6 months, I am therefore not satisfied by the Purchases that this occurred.

Based on the above, I therefore grant the Tenant's claim for \$9,360.00 in compensation, which I find represents 12 times the monthly rent payable under the tenancy agreement at the end of the tenancy of \$780.00, pursuant to section 51(2) of the *Act*. Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$9,360.00, and I order the Purchasers to pay this amount to the Tenant.

### Conclusion

I grant the Tenant's Application seeking compensation pursuant to section 51(2) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$9,360.00**. The Tenant is provided with this Order in the above terms and the Purchasers must be served with this Order as soon as possible. Should the Purchasers 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 Branch under Section 9.1(1) of the *Act*.

Dated: January 27, 2022

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Residential Tenancy Branch