



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNDCT, FFT

### Introduction

On July 18, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the Act.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on July 31, 2021. The Landlord confirmed receiving this package and that she could view all of the Tenant’s evidence. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

The Landlord advised that she served the Tenant with her evidence on January 7, 2022 by Xpresspost and on January 14, 2022 by registered mail. The Tenant confirmed that she received the Landlord’s evidence. As this evidence was received by the Tenant pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure (the “Rules”), this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to an additional Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 1, 2021 after being served the Notice. Rent was established at \$2,100.00 per month and was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

As well, all parties also agreed that the Tenant was served the Notice on January 27, 2021. The reason on the Notice was that "The father or mother of the landlord or the landlord's spouse" would be occupying the rental unit. It was indicated on the Notice that the effective end date of the tenancy was April 1, 2021.

The Landlord advised that her grandmother lived with her father for many years and that it was their intention to move into the rental unit together because her grandmother's long-term caregiver/friend lived close by. She stated that her father sold his house, that he made plans to move into the rental unit, and that he set up different utility accounts for the rental unit. In mid-March 2021, her grandmother's health deteriorated, and it was recommended that she be admitted to a long-term care facility, in April 2021, as she would receive 24-hour nursing care. She stated that her father moved some furniture into the rental unit on April 1, 2021; however, as he was her grandmother's primary caregiver, he wanted to be close to her. She submitted that he found a condo nearby the care facility on April 9, 2021 and purchased it 24 hours later. He then moved out of the rental unit sometime in early May 2021.

She stated that her father paid her \$1,700.00 per month for rent and that he paid her for March, April, and May 2021. After realizing that her father and grandmother would no longer be moving in, she advertised the rental unit for re-rental in mid-to late April 2021. She found a new tenant in May 2021 to rent the unit for June 1, 2021 for \$1,900.00, which was \$200.00 per month less than what the Tenant was paying.

She submitted that her grandmother's change in health and subsequent admission into a long-term care facility was an unforeseen circumstance that prevented her father from living in the rental unit for at least six months because he needed to live closer to his mother. She did not capitalize on this eviction as she lost money with her father and then the next tenant. She referenced her documentary evidence submitted to support her position.

The Tenant advised that the Landlord mentioned in her documentary evidence that her father and grandmother would be moving into the rental unit; however, there is no mention of the grandmother moving in on the Notice. As well, the father did not mention this in his letter. Regardless, she stated that the circumstances of the grandmother's change in health would not be considered an unforeseen circumstance. She questioned the setting up of utilities, the payments of rent, and the correspondence with the strata as these do not necessarily prove that the father moved into the rental unit.

She highlighted several of the contradictions that the Landlord stated in her timelines, and she questioned why the father would stay in the rental unit until the end of May 2021 if he had already purchased a new home. As well, she indicated that the rental unit is only 20 minutes away from the grandmother's long term care facility and the father's new residence is approximately the same distance away. As it is her belief that the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice, she is seeking compensation in the amount of **\$25,200.00** pursuant to Section 51 of the *Act*. In addition, she is also seeking compensation in the amounts of **\$525.00** for moving costs, **\$316.00** for cleaning costs, **\$527.00** for lost wages, and **\$60.00** for the cost of a notarized statement.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord served the Notice because she wanted her father to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated January 27, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**51 (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*  
*(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.*

At the time the Notice was served, the Landlord advised that the intention was for her father to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after she gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: "An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. 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 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."

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlord or close family member only. While it appears as if the Landlord's father may have briefly moved into the rental

unit at the beginning of April 2021, she then re-rented the unit for June 1, 2021. As the rental unit was clearly not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

In considering the Landlord's submissions, I acknowledge that the Landlord's plan was for her father and grandmother to move into the rental unit, despite her being "frustrated" with her father about this decision as she did not believe that it was a "suitable location or home for [her] senior grandmother." While she indicated that she "had no choice but to honour his decision" and that "This was not an ideal decision but one that had to be made", as the owner of the rental unit, I note that there was nothing forcing her to make the decision to serve the Notice for this reason.

Given the undisputed evidence of her grandmother's sudden change in health, I accept that this was an unforeseen circumstance. However, I do not accept that this would qualify as an extenuating circumstance that would have prevented her father, the person that was indicated on the Notice as occupying the rental unit, from residing there for at least six months from the effective date of the Notice. I acknowledge his desire to be closer to his mother; however, I note that the Landlord's grandmother was admitted to a long-term care facility where she was receiving "24/7 nursing care". In my mind, this would reduce much of the obligation for her father to be present at all times to take care of her. Given that the rental unit was not a significant distance away from this long-term care facility, I do not accept that the Landlord's father could not have used the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Furthermore, the swiftness with which the Landlord's father purchased another property after he allegedly moved into the rental unit does cause me to question the legitimacy of the events as portrayed. While it is possible that these events occurred serendipitously, as outlined, I am still not satisfied that the grandmother's change in health would constitute an extenuating circumstance that prevented the Landlord's father from occupying the rental unit for at least six months after the effective date of the Notice. As such, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$25,200.00**.

Regarding the Tenant's other claims for compensation, I reject her claims for \$525.00 for moving costs and \$316.00 for cleaning costs as it was not necessary for the Tenant to have paid for these expenses as she could have completed these herself. Moreover, I also reject her claims for compensation of \$527.00 for lost wages and \$60.00 for the cost of a notarized statement as there are no provisions in the *Act* to compensate for these issues.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$25,250.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: March 1, 2022

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Residential Tenancy Branch