



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 by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The tenant JDC primarily spoke for the tenants. The tenant called the witness MS who provided affirmed testimony.

The tenants are referenced in the singular.

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

Considerable disputed testimony was submitted by each party in the hearing. Not all asserted facts and arguments are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant filed this application on September 4, 2021. They claimed they are entitled to compensation of 12 months rent as the landlord evicted them in the amount of \$24,650.00. The reason for the eviction was that the landlord or spouse was moving into the unit. The landlord did not move into the unit within a reasonable time after the tenant moved out.

The landlord testified he did move into the unit and requested the application be dismissed.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term, then monthly
Beginning Date	November 15, 2018
Fixed Term End Date	November 15, 2019
Vacancy Date	January 31, 2021
Rent payable on first of month	\$2,050.00
Security deposit	\$1,000.00 (returned at end of tenancy)

The parties agreed this is their third dispute. Reference to the previous file numbers appear on the first page.

The parties agreed the landlord issued a Two Month Notice to end the tenancy as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") – copy submitted in RTB form
Date of Notice	November 19, 2020
Effective Date of Notice	January 31, 2021
Date and Method of Service	Registered Mail -before end of November 2020 – acknowledged by tenant
Reasons for Issuance	Occupation by landlord or landlord's spouse

The tenant provided a copy of the Two Month Notice which is in the standard RTB form. The reason cited for ending the tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant brought an application to dispute the Two Month Notice. However, they eventually accepted the Notice and moved out on January 31, 2021, the effective date of the Notice. As they had vacated the unit, the tenant's Application for Dispute Resolution was dismissed without leave to reapply on February 25, 2021. The RTB file number is referenced on the first page.

The tenant stated they moved to a new residence a short distance from the unit. The tenant JDC testified she does not work outside the home and passes the unit daily in her day-to-day activities, such as going to the park.

The tenant testified as follows. They had obtained a Monetary Order against the landlord in the hearing referenced on the first page and the eviction was retaliation. After they moved out, they noticed flyers accumulating uncollected at the unit's door. No

lights were ever on. No one came or went. From these observations, the tenant concluded the landlord did not move in and the unit was vacant. They saw the unit was offered for sale in November 2021 and subsequently sold.

The witness MS provided supporting testimony for the tenant's claim that the landlord did not move into the unit. MS testified as follows. MS lives across the street from the unit. They knew the tenant family in a neighbourly way and saw them move out on January 31, 2021. They saw accumulated mail outside the unit. They noticed no response in the unit when visitors came, such as the police who came to the unit once. They did not see lights. The doorbell was connected to a remote phone and visitor's attendance at the unit was responded to remotely. They saw the unit offered for sale and saw new occupants move in when it was sold shortly afterwards. From their observations, the witness MS testified they believed the landlord did not move into the unit. They observed that no one moved into the unit until after it was sold many months later.

The landlord testified as follows. He moved into the unit two weeks after the tenant moved out. He occupied the unit by himself. He put the unit up for sale mid-November 2021. He lived there until the unit sold the following month.

In support of his claim, the landlord submitted several of his invoices and testified as follows. These invoices indicated he billed for work done in other municipalities. In other words, he travelled a lot for work and was often out of town. The invoices show he was away for work for 3 to 17 days a month for the 6 months following the tenant's moving out. When not travelling for work, the landlord testified he does a lot of service calls as well as work in his home office in another municipality. He often sleeps in his office. The unit may have appeared unoccupied, but he was living there.

When asked why the tenant and witness MS observed the unit appeared unoccupied, the landlord replied that he often returned late at night and then just to sleep a short while.

The landlord submitted no other documentary evidence that he lived in the unit.

The tenant seeks 12 months rent as compensation in the amount of \$24,650.00 as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

Analysis

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 (2) of the Act provides:

(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

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(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.

(Underlining added)

(3) 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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property.

Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find as follows

I found the tenant provided credible testimony which was supported by the witness MS. I find the landlord's testimony to be less reliable and inadequately supported by evidence. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

In considering the Act, the Guideline and the facts as I find them, I find as follows.

I find the landlord failed to comply with section 51(3) and did not use the rental property for the reason stated in the Two Month Notice. He did not occupy the unit for a six-month duration within a reasonable period after the tenant moved out or live in the unit for at least 6 months within a reasonable period after the unit was vacant.

The tenant requested a Monetary Order in the amount of \$24,650.00.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement which I find is \$24,600.00. I grant an award to the tenant under this heading of \$24,600.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

In summary, I grant the tenant a Monetary Order in the amount of \$24,700.00.

Conclusion

The tenant is granted a Monetary Order in the amount of \$24,700.00.

This Monetary Order must be served on the landlord. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC.

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 18, 2022

Residential Tenancy Branch