



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFT, MNDCT**

### **Introduction**

This hearing dealt with the Applicants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, KN, his son, SN, and the Landlord's Legal Counsel, KB, and the Applicants, NH and OL, and Interpreter, NT, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicants testified that they served the Respondents with the Notice of Dispute Resolution Proceeding package for this hearing on January 7, 2022 by Canada Post registered mail (the "NoDRP package"). The Applicants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Respondents confirmed receipt of the NoDRP package. I find that the Respondents were deemed served with the NoDRP package on January 12, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Applicants served their evidence on the Respondents by email the next day after serving the NoDRP package, on January 8 2022. The Respondents confirmed receipt of the Applicants' evidence. I find that the Applicants' evidence was sufficiently served on the Respondents on January 11, 2022 pursuant to Section 71(2)(b) of the Act.

### Issues to be Decided

1. Are the Applicants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Applicants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2018. The fixed term ended on October 31, 2019, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,998.00 payable on the first day of each month. A security deposit of \$950.00 was collected at the start of the tenancy and was returned at the end of the tenancy.

The Two Month Notice issued on May 24, 2021 and effective on August 1, 2021 stated the reason why the Landlord was ending the tenancy was because the rental unit will be occupied by the Landlord's close family member, a child of the Landlord or Landlord's spouse. The Applicants vacated the suite on July 27, 2021. The Respondents' son moved into the rental unit on August 1, 2021.

The Respondents' son deposed that he and his parents discussed him living in the rental unit, and in the Spring of 2021 they decided he would move into the suite. The Respondents' son occupied the rental unit until November 2021. Prior to living in the rental unit, the Respondents' son lived in his parents' home. The Respondents' son stated in his affidavit that his daily commute time was usually around an hour. The Respondents' son said he assumed his commute to work from the rental unit would be comparable or a few minutes longer. The reality was that he was spending at least two hours commuting to work from the rental unit.

The Respondents' son deposed that he had to adjust to earlier bedtime hours so that he could wake up earlier to adjust for the commute to job sites. When the Respondents' son left work, the after work commute was also longer. The combination of his early morning departures and late arrivals home limited the amount of time he was able to spend with his wife or to participate in family activities.

The Respondents' son stated he intended to reside in the rental unit for many years; however, the work commute times turned out to be too stressful for him, so he decided to move. The Respondents' son's affidavit stated in about mid September 2021, he explained to his parents why he no longer wished to live in the rental unit, and his parents agreed to list the property for sale.

The Respondents entered into a purchase and sale agreement for the rental unit on October 6, 2021, and a sale completed on November 30, 2021. The purchaser's affidavit deposed that she purchased the unit for her own personal residence and is not willing to permit any tenancy of the unit.

The Applicants are seeking tenant's compensation pursuant to Section 51(2) of the Act, which is compensation in the amount of 12 times the monthly rent payable under the tenancy agreement for a total amount of \$23,976.00.

The Respondents' claim, pursuant to Section 51(3) of the Act, extenuating circumstances that excuse the Respondents from paying the Applicants the amount required under subsection (2).

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application; however, in some situations the arbitrator may determine the onus of proof is on the other party.

The Respondents ended their tenancy with the Applicants for Landlord's Use. The stated purpose proffered by the Respondents in their Two Month Notice was that a child of the Respondents intended, in good faith, to occupy the rental unit for a duration of at least six months. I find that the Respondents have the onus to demonstrate that their

child planned to occupy the rental unit for at least six months and that they had no dishonest motive.

Section 51(2) and (3) of the Act state:

***Tenant's compensation: section 49 notice***

**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 the landlord or purchaser, as applicable, does not establish that*
  - (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
  - (b) *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.*
- (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 applicable, from*
  - (a) *accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and*
  - (b) *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.*

I find that the stated purpose for ending the tenancy began within a reasonable period after the effective date of the Two Month Notice, as the Respondents' son commenced occupation in the rental unit for a residential purpose on August 1, 2021. I find the six

month duration required under Section 51(2)(b) of the Act would end on January 31, 2022. The Respondents' son found the commute times to and from work too stressful and told his parents he did not want to live in the rental unit any longer. The Respondents put their property up for sale and a contract for purchase and sale closed on November 30, 2021. The son moved out of the rental unit sometime in November 2021.

RTB Policy Guideline #50 assists the public addressing requirements for a landlord to pay compensation to a tenant when:

...  
*a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given;*  
...

I find the Respondents failed to use the rental unit for the purpose for which the notice was given pursuant to Section 51(3)(b) of the Act. The Respondents ask me to excuse the Respondents from paying additional compensation to the Applicants as there were extenuating circumstances that stopped the Landlord from accomplishing the stated purpose pursuant to Section 51(3) of the Act. Policy Guideline #50 discusses what may be considered an extenuating circumstance:

#### ***E. 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 one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

The Respondents' son, after a short period of time, determined that commute times to and from the rental unit for his job turned out to be a hardship as they were too long and stressful. Legal counsel for the Respondents submitted that the Respondents' son had the intention to occupy the rental unit, "*but it did not work out.*" I find, effectively, the Respondents' son changed his mind when he experienced the commute times to and from work as being nonworkable for him. I do not find that the Respondents' son's commute times satisfy me though that there were extenuating circumstances which would make it unreasonable or unjust to hold the Respondents to their legislated responsibilities. I find the Respondents did not accomplish the stated purpose for ending the tenancy for Landlord's Use and they are not excused from paying compensation to the Applicants specified under Section 51(2) of the Act.

The Applicants are entitled to compensation in the amount of \$23,976.00 pursuant to Section 51(2) of the Act. As the Applicants are successful in their claim, they are entitled to recovery of the application filing fee. The Applicants total Monetary Award is determined to be \$24,076.00.

### Conclusion

I grant a Monetary Order to the Applicants in the amount of \$24,076.00. The Respondents must be served with this Order as soon as possible. Should the Respondents fail to comply with this Order, this Order may be filed in the Small Claims

Division of the Provincial Court of British Columbia 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 Act.

Dated: May 09, 2022

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Residential Tenancy Branch