



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Issue Codes: MNDCT FFT

### Introduction

The applicants (also referred to as “tenants” in this application) seek compensation against the respondent (also referred to as the “purchaser” in this application) pursuant to section 51(2) of the *Residential Tenancy Act* (“Act”). The applicants also seek recovery of the cost of the application filing fee under section 72 of the Act.

A dispute resolution hearing was convened at 1:30 PM on May 30, 2022, and only the tenants attended. The respondent did not attend the hearing, which ended at 1:48 PM.

The applicants testified that they served the Notice of Dispute Resolution Proceeding on the respondent by Canada Post registered mail on October 28, 2021. The tenant read out the registered mail tracking number into evidence. The tenant then gave testimony that they mailed out a second package (containing their documentary evidence) to the respondent in early February 2022. The second package was returned unclaimed.

Based on the undisputed oral evidence before me, it is my finding that the respondent was served with the required Notice of Dispute Resolution Proceeding necessary for them to attend the hearing and participate in the dispute resolution process.

### Issue

Are the tenants entitled to compensation?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began around September 2019 and ended on July 1, 2021. Monthly rent was \$2,559.00.

The tenancy ended after the landlords, under instructions from the purchaser, gave the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). A copy of the Notice was in evidence. It was signed by the landlord's agent on April 27, 2021 and indicated that the tenancy end date would be July 1, 2021. Last, it is noted that while there are two tenants listed on the Notice, only one of the tenants (W.M.) is an applicant to this dispute.

Page two of the Notice indicates that the reason for the Notice being issued is that "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 [the] Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

Also submitted into evidence was a copy of the "TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION" document, in which it states that the purchaser requests the sellers (the landlords) to give notice to the tenants. It asks that the landlords end the tenancy on July 1, 2021.

The tenants then vacated the property on or about July 1, but the purchaser does not appear to have ever moved into the house. Submitted into evidence is a series of photographs that were taken on July 8, July 29, August 14, August 29, September 22, and September 30, 2021. The first three photographs depict the house with boarded up windows. There is an excavator sitting in front of the house in the fourth photograph. The last two photographs depict an empty lot where the demolished house used to sit.

### 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.

The tenants seek compensation under section 51 of the Act. As I briefly explained to the tenants, the twelve months' compensation is calculated on the rent that was being paid at the time they occupied the rental unit. The amount sought in this application was incorrectly calculated based on the higher rent that the tenants ended up having to pay after they vacated the property. This amount is therefore corrected.

The Notice was given by the landlords, under the instruction of the purchaser, on April 27, 2021. As such, it is section 51 of the Act that was in force on this date that applies to this application. (Available online at [www.canlii.org/en/bc/laws/stat/sbc-2002-c-78/187569/sbc-2002-c-78.html](http://www.canlii.org/en/bc/laws/stat/sbc-2002-c-78/187569/sbc-2002-c-78.html).) Subsection 51(2) of the Act reads as follows:

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.

In this dispute, the undisputed facts, supported by the tenants' oral testimony and photographic evidence, are such that no steps appeared to have been taken by the purchaser to occupy the rental unit as stated on the Notice. Instead, the purchaser boarded up the house and had it demolished within 3 months of the tenancy being ended.

Subsection 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 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.

There is before me no evidence, direct or circumstantial, and no information whatsoever for me to find that extenuating circumstances prevented the purchaser from meeting the obligations set out in subsections 51(3)(a) or (b) of the Act.

Taking into consideration all the undisputed and persuasive evidence before me, it is my finding that the tenants are entitled to compensation equivalent of 12 times the monthly rent payable under the tenancy agreement in the amount of \$30,708.00.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. When an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the tenants were successful, the respondent is ordered pay the tenants \$100.00 for the cost of the filing fee.

Pursuant to sections 51(2) and 72 of the Act the respondent is ordered to pay to the applicants \$30,808.00 within 15 days of receiving a copy of this decision.

A monetary order in this amount is issued to the applicants in conjunction with this decision. The applicants must serve a copy of the monetary order on the respondent and may enforce that order in the Provincial Court of British Columbia.

### Conclusion

The applicants' application is hereby **GRANTED**.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: May 30, 2022

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Residential Tenancy Branch