



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 29, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2003. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,600.00. The Tenant paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$300.00. The parties were unsure as to the status of the deposits. The parties agreed that the tenancy ended on July 30, 2021.

The parties testified that the Landlord served the Tenant with a Two Month Notice dated May 31, 2021 with an effective vacancy date of July 31, 2021. The Landlord stated that he accepted the purchasers offer to purchase the rental property and that the purchaser requested that the Landlord serve the Two Month Notice as the purchaser sought vacant possession of the rental unit for their own use. The parties provided a copy of the Two Month Notice and also the signed "Buyers Notice to Seller for Vacant Possession".

The Landlord stated that the purchaser did not follow through on the purchase of the rental property after it was found that the septic system required complete replacement at a significant cost. The Landlord stated that the rental property did not sell as intended and has sat vacant for 8 months until the Landlord had the septic system replaced in December 2021 at a cost of \$45,940.30. The Landlord provided the invoice for the completed work in support. The Landlord stated that since the septic system was replaced, he has decided to re-rent the rental property as of March 2022.

The Tenant stated that there were no issues with the septic system during her tenancy and that the Landlord has not demonstrated that there were issues prior to having it replaced. The Tenant stated that she suspects that the Landlord replaced the septic system to accommodate future development on the property. Furthermore, the Tenant stated that she had previously been assured that she would be able to remain in the rental unit and would not be displaced.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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.

**(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.**

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

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). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Tenant is claiming compensation in the amount of \$19,200.00 which represents twelve months of rent as the purchaser did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

In this case, I accept that the purchaser instructed the Landlord to serve the Tenant with the Two Month Notice as the purchaser intended to occupy the rental property. During the hearing, the Landlord stated that the purchaser withdrew their offer after learning that the septic system required replacement. I accept that the Landlord replaced the septic system at a cost of \$45,940.30 which demonstrates that the septic system required replacement. I am further satisfied that the rental unit remained vacant during this time, therefore, there was no benefit to the Landlord to show that they were acting in bad faith.

I find that the requirement of replacing the septic at a significant cost constitutes an extenuating circumstance that prevented the purchaser from following through on the purchase of the rental property and did not accomplish the intended purpose of the Two Month Notice. As such, I find that the Tenant is not entitled to monetary compensation. I find that the Tenant's Application is therefore dismissed in its entirety without leave to reapply.

### Conclusion

The Landlord has provided sufficient evidence to demonstrate an extenuating circumstance prevented the purchaser from following through on the intended purpose of the Two Month Notice. Therefore, the Tenant's Application is dismissed without leave to reapply.

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: May 4, 2022

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Residential Tenancy Branch