



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for compensation equivalent to 12 times monthly rent pursuant to s. 51; and
- Return of his filing fee pursuant to s. 72.

R.M. appeared as the Applicant and is the former Tenant. D.M. appeared as agent and principal for the corporate purchaser (the “Purchaser”). E.L. appeared as the Respondent and was joined by her husband, S.L.. Both S.L. and E.L. were R.M.’s former Landlords (the “Former Landlords”). The Former Landlords were represented by counsel, R.G..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Applicant advised that he served the Purchaser and the Former Landlords with the Notice of Dispute Resolution and his evidence by way of registered mail. He has provided tracking information indicating it was sent on November 12, 2021. The respondents acknowledged receipt of the Applicant’s application materials. I find that the Applicant served each of the respondents in accordance with s. 89 of the *Act* as acknowledged by them at the hearing.

R.G. advises that the Former Landlords’ response evidence was served on the other parties by way of registered mail. The other parties, being the Applicant and the

Purchaser, acknowledge its receipt. I find that the Former Landlords served their response on the other parties in accordance with s. 89 of the Act.

D.M. advised that the Purchaser provided evidence to the Residential Tenancy Branch but was unable to confirm that it had been served on the other parties. The other parties indicate they received no evidence from the Purchaser. Rule 3.15 requires a respondent to serve the evidence they intend to rely upon on the other parties. Rule 3.16 of the Rules of Procedure requires a respondent to demonstrate service of their evidence at the hearing.

I find that the Purchaser has failed to serve its response evidence on the other parties. As it has not been served, I find that it would be procedurally unfair to the other parties to consider evidence they have not had the opportunity to review. Accordingly, the response evidence provided to the Residential Tenancy Branch by the Purchaser is not admitted and shall not be considered.

#### Issue(s) to be Decided

- 1) Is the Applicant entitled to compensation equivalent to 12 times monthly rent?
- 2) Is the Applicant entitled to the return of his filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties all confirmed the following details with respect to the former tenancy:

- The Applicant took occupancy of the rental unit as tenant on July 1, 2019.
- The Applicant gave vacant possession of the rental unit to the Former Landlords on June 18, 2021.
- At the end of the tenancy, the Applicant paid rent in the amount of \$2,900.00 on the first of each month.

The Applicant provides a copy of the tenancy agreement that confirms these details.

The Applicant provides a copy of a Two-Month Notice to End Tenancy signed by the Former Landlords on May 7, 2021 (the "Two-Month Notice"). R.G., speaking for the

Former Landlords, indicates that the Two-Month Notice was issued after they received a notice from the Purchaser requesting vacant possession of the rental unit. The Two-Month Notice was issued on the basis that all the conditions for the sale of a rental unit had been satisfied and the purchaser or a close family member intends, in good faith, to occupy the rental unit.

The Purchaser advises that he signed the purchaser contract for the property on April 28, 2021, though was unclear on when possession was obtained indicating to his recollection it was on August 4, 2021. The Former Landlords advised that possession transferred to the Purchaser on July 9, 2021.

As mentioned above, the Applicant tenant moved out on June 18, 2021 and, at the hearing, he advised that he was compensated for 1 month's rent by the Former Landlords.

R.G. referred me to the evidence provided by the Former Landlords, which is titled the Buyer's Notice to Seller for Vacant Possession (the "Buyer's Notice"). It is in the standard form provided by the BC Real Estate Association. R.G. advised that the Two-Month Notice was issued by the Former Landlords on the basis of the request in the Buyer's Notice. It is signed by the corporate Purchaser on May 6, 2021 and indicates that the "Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined by the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property."

D.M. advised that he is the sole shareholder for the Purchaser and further advised that he purchased the property with the understanding that he was requesting vacant possession of the property. It was emphasized that Purchaser and the Former Landlords worked through realtors.

The Purchaser advised that residential property was demolished sometime in either October or November 2021. The Purchaser further advised that a new building is in the process of being constructed. No one is currently residing within the new building. D.M. admitted that he has no intention of residing within the residential property after construction is completed and the plan, from the outset, was to redevelop it for resale.

### Analysis

The Applicant tenant seeks compensation pursuant to s. 51 of the *Act*.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser, as the case may be, who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Under the circumstances, I find that E.L. is improperly listed as a respondent in this action. The wording of s. 51 of the *Act* is clear that the evidentiary burden rests with the purchaser of the property when it states the following “or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant.” As the burden rests with the Purchaser the ultimate responsibility for compensation, if any, rests with it. It is not a situation where the respondents would be jointly or severally liable to the Applicant based on the claim raised by the Tenant. Accordingly, I sever E.L. as a respondent in this matter pursuant to Rule 4.2 of the Rules of Procedure.

I have little difficulty in finding that the Purchaser has failed to demonstrate that the purpose stated within the Two-Month Notice was accomplished or that it had been used for the stated purpose for at least 6-months. Indeed, D.M. admits that he does not intend to reside within the residential property. He further states that he is the sole shareholder for the Purchaser. The plan, from the outset, was for the Purchaser to demolish the residential property, build something new, and sell it.

This is direct contravention of the Buyer’s Notice issued to the Former Landlords and signed by the Purchaser on May 6, 2021. The Purchaser does not dispute the veracity or authenticity of the Buyer’s Notice. It states, explicitly, that vacant possession was being requested on the basis, in this case, a voting shareholder for the buyer intends in good faith to occupy the residential property. That never occurred and D.M. admits that the residential property was demolished in October or November 2021 as part of the plan to sell the property after the development.

I find that the Purchaser’s voting shareholder, in this case D.M., did not reside within the residential property at all as requested in the Buyer’s Notice and as stated in the Two-Month Notice. The Two-Month Notice appears to have been issued at the Purchaser’s request either in bad faith on the part of the Purchaser or with a significant

misapprehension of the *Act* on the part of the Purchaser and/or its realtor. In either event, it does not matter.

Pursuant to s. 52(3) of the *Act*, a landlord or purchaser may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord or purchaser from carrying out the stated purpose set out under the notice issued under s. 49. The Purchaser did not argue there were any extenuating circumstances nor is it clear to me that any would exist under the circumstances based on the evidence and the submissions made at the hearing.

I find that the Purchaser has failed to discharge its evidentiary burden under s. 51(2) of the *Act*. It was freely admitted at the hearing that the purpose stated in the Two-Month Notice was not fulfilled at all or that D.M. intends to occupy the new property once construction is complete. I find that the Applicant is entitled to compensation under s. 51(2) of the *Act* in the amount of \$34,800.00 (\$2,900.00 x 12).

### Conclusion

I amend the application to remove E.L. as a named respondent in this matter as the Two-Month Notice was issued at the Purchaser's request. The burden of proving that s. 51(2) does not apply rests with the Purchaser and the consequences of compensation rests with it.

I find that the Purchaser failed to discharge its evidentiary burden under s. 51(2) and further admitted that the intention was never to occupy the rental unit as requested in the Two-Month Notice. I find that the Applicant is entitled to compensation under s. 51(2) in the amount of \$34,800.00.

As the Applicant was successful in his application, I find that he is entitled to the return of his filing fee. Accordingly, I order pursuant to s. 72 that the Purchaser pay his \$100.00 filing fee.

Combining the amounts listed above, I order pursuant to ss. 51, 72, and 67 that the Purchaser pay **\$34,900.00** to the Applicant (\$34,800.00 + \$100.00).

It is the Applicant's obligation to serve the monetary order on the Purchaser. If the Purchaser does not comply with the monetary order, it may be filed by the Applicant

with 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: June 10, 2022

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Residential Tenancy Branch