



# Dispute Resolution Services

Page: 1

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 (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$11,860.00, for compensation related to a Notice to End Tenancy for Landlord's Use of Property dated September 27, 2020 (2 Month Notice), and to recover the cost of the filing fee.

The hearing began on March 7, 2022 and after 67 minutes, the hearing was adjourned to allow additional time to hear from both parties. An Interim Decision was issued dated March 8, 2022, which should be read in conjunction with this Decision.

Attending both dates of the hearing were the tenant, counsel for the tenant, JN (counsel), a support person for the tenant, EG (support), and tenant witness, WPT (witness), the landlord and the spouse/agent for the landlord, TM (agent). The participants were introduced, a brief overview of the hearing process was explained, and the parties were given an opportunity to ask questions. As neither party provided valid evidence that they were not served in accordance with the Rules of Procedure, I find the parties were sufficiently served in accordance with the Act. Both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me. Everyone was affirmed, with the exception of counsel who has already sworn an oath when called to the BC Bar.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

During the hearing, the landlord and their agent were both cautioned for interrupting the undersigned arbitrator. After failing to comply with my direction at the second portion of the hearing held on May 9, 2022, I muted both the landlord and their agent pursuant to RTB Rule 6.10. I will address the behaviour of the landlord and their agent further in this Decision.

### Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Although the tenancy began in 2014, a new month-to-month tenancy agreement began on September 1, 2020 and was signed on September 14, 2020. Monthly rent was \$980.00 per month and was due on the first day of each month.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 27, 2020 (2 Month Notice). The reason stated on the 2 Month Notice is:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord submitted the following documents summarizing their position. All personal information has been redacted to protect privacy.

- I have owned the condo at [REDACTED] for the last 4 years.
  - [REDACTED] was my tenant during this time.
  - I had a management company for the time [REDACTED] was my tenant, but they were not to my liking.
  - I changed to another management company in May of 2020, to make sure everything was taken care of. [REDACTED] was my property manager.
  - For the last 10 years, I have worked as a nursing Program Director at [REDACTED]; before that as a nursing manager for 10 years.
  - For the last year or so, I've considered retiring.
  - My parents owned a house in West Kelowna and my husband, myself and my children visited for over 25 years. This was the foundation for my decision to move to Kelowna after my retirement.
  - In the fall of 2020 I decided I would retire in early 2021.
  - I anticipated late March or April as my retirement date.
  - Therefore, I did not want to renew [REDACTED]'s lease for another year and was told by [REDACTED] that it could be a month to month term.
  - In September of 2020, I decided that I wanted to end [REDACTED]'s tenancy so that I could use the condo in 2021, and then move into it after retirement at the end of April.
  - I told [REDACTED] to serve proper notice to [REDACTED]
  - [REDACTED] stayed for the month of October, but moved out November 1, 2020.
  - [REDACTED] paid his rent for October.
  - I was told by [REDACTED] that I had to pay him the November rent and return his damage deposit.
  - I paid [REDACTED] a total of \$1930.00 (Ex. 1).
- 
- Sometime in November, 2020, my spouse, [REDACTED] and I decided he would go out to Kelowna before me and make sure everything in the condo was fixed and working.
  - He is retired, so he could go before me.
  - I planned to visit in January, February and March in order to use up my accrued vacation prior to the new fiscal year.
  - [REDACTED] left Wpg. on December 24, heading to Kelowna.

- I planned on keeping my home in Wpg., so it was decided that we would purchase any major furniture for the condo after I retired and moved there. [REDACTED] had bought a mattress and a few kitchen items before I got there.

- My partner sent frequent messages, pictures, and ideas, and made some changes I wanted

(Ex. 2, 2A).

- I flew from Wpg. to Kelowna on January 16, 2021. My return was supposed to be February 2, 2021. My vacation was cut short (Ex. 3).

- The Manitoba government made a public health order stating that Manitoba residents had to return before midnight January 28, 2021, or be required to self-isolate for 14 days.

- Previously, there were NO travel restrictions between the western provinces.

- After consulting with my boss, I returned to Manitoba on the deadline date to avoid the required 14 day self-isolation.

- These restrictions remained in place in the spring and summer of 2021.

- I was not able to return to BC in February and March because:

1) the Manitoba public health order

2) the surge of COVID numbers in Manitoba

3) the crisis in Manitoba and in particular my hospital

- The Covid rules were changing almost daily. I was responsible for the largest program in my hospital, and managing patients, staff and the ongoing changes to healthcare was a nightmare. I could not retire as early as I had planned. I can give more detail at the hearing if required.

- I could not travel to BC, and then quarantine for 2 weeks upon

- The changing circumstances delayed my retirement plans, and it was apparent the Manitoba government was not lifting the restrictions in the near future. At the beginning of April I had no idea when I would feel comfortable retiring and I had no idea when I would be able to use my condo again.

- [REDACTED] remained in Kelowna during this time. I told [REDACTED] I would not be able to retire at the end of April, so he came back to Winnipeg to be with me.

- I decided to sell my property in mid-April due to my inability to travel.



In preparing to live in my condo, I did a number of things:

- I had Fortis change the electricity bill into my name (Ex. 4).
- I paid for the months of November 2020 through to June 2021 (Ex. 5, 5A, 5B).
- I had [REDACTED] fix or repair what was required for our benefit and comfort.

The following are some other things he did.

- The air conditioning was not working properly so I asked [REDACTED] to look into repairing or replacing it. We finally decided to replace the wall unit. I saw the new unit when I was there in January.
- I did not like the towel holder in the bathroom so asked him to remove it and patch the holes.
- The blind in the bedroom that [REDACTED] installed was 2" too narrow on either side, so [REDACTED] had a blind made to fit and he installed it. I saw it when I was there.
- The curtains for the patio door were unattractive, so I asked [REDACTED] to look for new verticals. He did this after I left (Ex. 6).
- [REDACTED] told me there was no baseboard heater in the living room. I knew there had been one there before. He hired an electrician to install one. I saw the new baseboard when I was there in January.
- There was a big hole in the drywall in a closet so [REDACTED] got a piece of drywall and patched it (Ex. 7)
- There were nicks in the paint and baseboard that [REDACTED] fixed after I left.

eventually decided to wait until I retired and moved to Kelowna.

- I also took some pictures on my phone of the condo when I was there of the work [REDACTED] had done (Ex. 8).
- I know there were some other things I asked [REDACTED] to change for me, but I cannot remember all of them now.
- [REDACTED] had the use of not only the garage, but an additional parking stall. The additional parking spot was taken away by the condo management company once notified that [REDACTED] was vacating.

The management company stated that this was their standard rule. I was advised if I required a spot I would have to reapply, and go to the bottom of the waiting list. I reapplied and was able to secure an additional parking spot for my use February 1, 2021 and thereafter. My condo fees reflected this additional cost. (Ex. 9).

I can provide further information about my use of my condo in January, 2021 if necessary.

In addition, the landlord's agent submitted the following statement. All personal information has been redacted to protect privacy.

My name is [REDACTED] and I am the common law husband of [REDACTED] and have been since March of 2018. We have lived together since the beginning of March, 2018. (Ex. 1 first page of cohabitation agreement). I have been retired for four years. [REDACTED] worked at the [REDACTED] Hospital in Winnipeg. [REDACTED] planned to retire at the end of April, 2021. We intended to move to Kelowna and live in her condo at [REDACTED]. [REDACTED] I learned that the end of her tenancy and the notice period would be the end of November, so I decided to go out to Kelowna ahead of her. Because I have friends and family and grandchildren in Winnipeg, I decided to leave right after Christmas. In fact, I ended up leaving on Dec. 24 because of the way the holidays were planned. I left for Kelowna on Dec. 24 around 8 am. (Ex. 2, my class B motorhome. The photo is from my iPad and I didn't know how to include the date, so I hand wrote it in). I got to Kelowna around 7 pm on Christmas Day. I set up an inflatable mattress as a temporary bed. (Ex. 3). There was no baseboard heater in the living room and it was a little cool, so I bought a space heater at Canadian tire. (Ex. 4. - the other photos are outside the condo and at the [REDACTED] just down the street). I forgot to mention that [REDACTED] had arranged for me to pick up the keys at the office of the property manager in Kelowna. (Ex. 5). Over the next few months I fixed everything in the condo that needed fixing or upgrading and anything that [REDACTED] wanted changed. One of her first issues was the air conditioner, which she wanted to replace or change to a different system. I looked into the possibility of a split system and arranged for two companies to come out and give me estimates. (Ex. 6 and 7). [REDACTED] decided that the split systems were pretty expensive and since the wall unit had worked before, that I should try to find a replacement unit and we would try that first. I found one at Rona on Springfield Road and I installed it. (Ex. 8 and 9). I bought a queen size mattress on January 3, 2021. It was a gel mattress that comes in a box and then expands. I sent a picture to [REDACTED] as it was expanding. (Ex. 10, Ex. 11 and Ex. 12). As I mentioned, over the next few months, I lived in the condo and fixed and changed a number of things:

As I mentioned, over the next few months, I lived in the condo and fixed and changed a number of things:

1. On February 10, 2021, I ordered a new set of vertical blinds for the patio door in the living room. They had to be custom made and it took at least a month to get them. I installed them sometime around the middle of March. (Ex. 13).
2. I had an electrician come out and replace a wall switch that didn't work. (Ex. 14).
3. I had the same electrician come out and install a baseboard heater in the living room that someone had removed some years earlier. (Ex. 15).
4. I put up trim on the air conditioner after I installed it. I also put up new trim on the outside around the air conditioner, but I had to wait until the weather was warmer in late March to paint it.

When I was living in the condo, I either got a phone call from [REDACTED] (the applicant), or he left a note on the door for me. He wanted to collect his mail, because he had not advised Canada Post of his change of address for some reason. I called him and arranged to drop off his mail at his new apartment which was just down the street. We talked about a number of things. One of the things we talked about was the fact that I was living in the condo and was waiting for [REDACTED] to retire and join me. We also talked about a woman that lived in the same complex in unit [REDACTED]. I told [REDACTED] that I had only met her once, but she had started to leave me strange notes. I asked [REDACTED] if he had encountered problems with her and he told me that she had some mental health issues along with a drinking problem. He told me that the police had been called to the complex on a number of occasions. It was a very cordial conversation. [REDACTED] even suggested that we should meet up at the [REDACTED] Pub sometime for a drink, but I never bothered to call.

[REDACTED] most definitely knew that I was living in [REDACTED] condo and he most definitely knew that [REDACTED] and I had been in a relationship for a number of years. I believe our meeting was in late January or early February. When I came out to Kelowna I brought my kayak and bike, and I also brought [REDACTED] kayak, paddle board and bike. I stored them in the garage that [REDACTED] owned as part of her condo. (Ex. 16).

On February 20, 2021, I went into the Scotiabank closest to the condo and made an appointment for March 4. On March 4, I transferred all my bank accounts, investments and RRSP's to the Kelowna branch. (Ex. 17).

[REDACTED] came to Kelowna on January 16, to stay for the two weeks we had planned. (Ex. 18).



While in Kelowna we learned that the Manitoba government had made a public health order that anyone who returned to Manitoba from another province would be required to self isolate for 2 weeks at home. (Ex. 19). As a result of this [REDACTED] had to shorten her trip and returned to Manitoba on January 28; otherwise she would not have been able to go into work at the hospital.

From this point on, there were significant problems in Manitoba with the Covid pandemic and there was a crisis within the healthcare system, and in her hospital in particular. By the beginning of April, Covid numbers were skyrocketing in Manitoba. (Ex.21).

As of March 16, 2021, I was still hoping that [REDACTED] would be able to retire at the end of April and come to Kelowna. I continued to send her pictures of furniture for her to consider. (Ex. 22).

However, by the end of March it was clear that due to circumstances beyond her control, she would not be able to travel or retire until much later. As soon as she decided to sell, I sent her a photo of a potential realtor. (Ex. 23).

I wish to question the applicant at the hearing on March 7, 2022.

The landlord confirmed the rental unit was listed for sale on April 12, 2021, which was the day after the landlord's agent return to Manitoba from BC. The landlord testified that COVID was the largest part of their decision to sell the rental unit as morally, the landlord could not just retire when they were expected and felt compelled to develop a separate COVID unit given that the landlord is a high-level director at a hospital in Winnipeg, Manitoba.

The landlord also provided proof of changes to the rental unit utilities in support of the landlord changing the utilities into the name of the landlord. The landlord's agent described work being done at the rental unit between December 25, 2020 and April 11, 2021. The landlord and agent confirmed that the rental unit was not re-rented between the time the tenants vacated the rental unit and when the rental unit was listed for sale on April 12, 2021.

At the reconvened hearing on May 9, 2022, the landlord's agent requested that I recuse myself due to the creation of a "new document" and that the landlord's agent alleged that there was a reasonable apprehension of bias due to the creation of the document, which was the second Notice of Dispute Resolution Hearing. The parties were advised that I declined to recuse myself as a Notice of Dispute Resolution Hearing is a standard document created in all disputes where an adjournment has taken place and is simply



issued to both parties to advise the parties of the date and time and access codes of the reconvened hearing.

Tenants' counsel was asked if they had any concerns regarding bias and the tenants' counsel confirmed they had no concerns and wanted to proceed with the hearing. As a result, of the above, the parties were advised that the hearing would proceed as scheduled.

At this point in the hearing, the landlord requested an adjournment to seek legal counsel. This request was denied as the landlord was advised that they had between March 7, 2022 and May 9, 2022 to arrange for legal counsel and failed to do so. I also find that such a request would be prejudicial to the tenants who have waited since they applied on August 17, 2021 for this matter to be heard and concluded. Given the above, the hearing continued.

The landlord testified that they were refusing to participate without counsel present and as a result, and after several interruptions and what I consider to be delay tactics on behalf of the landlord and their agent, the landlord and agent were muted until such time that the tenants and their counsel completed their testimony and submissions.

Tenant's counsel submits that the intentions of the landlord were to sell the rental property all along and that in August 2019, the landlord sent a text message to the tenants indicating that they had the intention and thought of selling the rental unit. Counsel also submitted an email dated May 5, 2020, which indicates that the landlord stated that after some careful thought, that they may not be able to come to Kelowna and that they planned on hiring a property manager as a result. Although the tenants indicated that the landlord likely did not need a property manager, the landlord confirmed they were hiring one and that the property manager was the person to issue the 2 Month Notice on behalf of the landlord.

Tenant's counsel submits that within 15 days of signing a new month-to-month tenancy on September 14, 2020, the tenant was served with the 2 Month Notice dated September 27, 2020. Tenant's counsel also stated that in May 2020, you cannot rely on COVID as an excuse in 2021 when the landlord already made it known that they needed a property manager due to the landlord having difficulty coming to BC in May 2020 due to COVID.

There is no dispute that 5 months and 11 days after the tenant vacated the rental unit on November 1, 2020, that the rental unit was listed for sale on April 12, 2021. Tenant's

counsel submits that the rental unit sold almost instantly. Although tenant's counsel raised the issue of good faith, this matter does not involve good faith, which I will address in my analysis below.

Witness WPT (witness) was affirmed and testified that they have been living in the same unit for 2 years. The witness confirmed that they knew the tenant and that in August or September the tenant vacated in 2020. The witness was asked where they reside in relation to the tenant, and the witness confirmed they lived one unit down and one unit over. The witness stated that an older gentleman (landlord's agent) invited them in to look at broken tiles in the backyard. The witness said they had "cordial chit chat" with the landlord's agent and when they were inside the rental unit they saw the kitchen that was very empty except for a few tools in the kitchen. The witness confirmed they did not get a full tour of the unit. The witness asked the landlord's agent if they were moving in, and they said the response was "no, just fixing it up and then selling it."

The landlord was given the opportunity to cross-examine the witness, and instead requested counsel, which I have already addressed above. As a result, the witness was excused.

Counsel states that the landlord has fallen short of their requirements under the Act and that in 2019 via text the landlord admitted to wanting to sell sometime in 2020. Counsel submits the landlord never moved in and that once the rental unit was fixed up it was sold.

The landlord claims they were denied a fair hearing, which I disagree with. I find the behaviour of the landlord and their agent to argumentative and that due to their inability to follow direction, forced me to mute them as indicated above, pursuant RTB Rule 6.10.

### Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Although tenant's counsel raised the issue of good faith, this matter does not involve good faith as the only time good faith is an issue, is when disputing the 2 Month Notice, which the tenants did not do. The tenants accepted the 2 Month Notice, were compensated the one-month free rent, and vacated based on the 2 Month Notice. The 2 Month Notice had an effective vacancy date of November 30, 2020.

Given the above, the only issue for me to determine is whether the landlord complied with the reason stated on the 2 Month Notice for a minimum of 6 months from the effective vacancy date, and if not, has the landlord provided sufficient evidence of extenuating circumstances that prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose and using the rental unit for that stated purpose for at least 6 month's duration, beginning within a reasonable period after the effective date of the notice.

**12 times the monthly rent** - Section 51(2) of the Act applies and states:

**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**

- (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.**

[emphasis added]

In addition to the above, section 51(3) of the Act states:

**(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.**

[emphasis added]



RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

#### **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.

[emphasis added]

I find RTB Policy Guideline 50 takes a reasonable approach and based on the evidence before me, I find the landlord was already aware of COVID which began in March 2020 and that prior to issuing the 2 Month Notice, the landlord ought to have determined whether COVID would prevent them from complying with the reason stated on the 2 Month Notice.

I have thoroughly reviewed the documents submitted by the landlord and find the reasons provided by the landlord and their agent do not meet the definition of extenuating circumstances that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration. Rather, I find the landlord made the decision to delay their retirement and continue to work. I find the landlord could have and should have anticipated that COVID could create travel issues between Manitoba and BC during a pandemic, especially considering that the landlord is a nursing program director working in a Manitoba hospital.

Based on the above, I find the landlord has failed to satisfy me that extenuating circumstances existed that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration. Therefore, I find the tenants are entitled to **\$11,760.00** in compensation from the landlord, comprised of twelve times the monthly rent of \$980.00 pursuant to section 51(2) of the Act.

As the tenant's application was fully successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$11,860.00** comprised of \$11,760.00, which is 12 times the \$980.00 monthly rent, plus the \$100.00 filing fee.

### Conclusion

The tenant's application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and instead, sold the rental unit under 6 months after the effective vacancy date listed on the 2 Month Notice and as a result, the tenant is granted 12 times the monthly rent as described above.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$11,860.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlord. The landlord is reminded that they can be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2022

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Residential Tenancy Branch