



# 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 tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$13,900.00, for 12 months' compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 10, 2021 (2 Month Notice), and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. All participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the 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.

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. Neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

### Preliminary and Procedural Matter

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.

### Issues to be Decided

- Are the tenants 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, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The newest tenancy agreement was submitted in evidence and began on March 14, 2020. The fixed-term tenancy was to convert to a month-to-month tenancy after April 30, 2021. Monthly rent was \$1,150.00 per month and was due on the first day of each month.

The tenants were served with the 2 Month Notice dated February 10, 2021. The effective vacancy date listed on the 2 Month Notice was April 30, 2021. There is no dispute that the tenants vacated the rental unit on April 30, 2021. The reason stated on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input 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). Please indicate which close family member will occupy the unit.
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	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 this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The landlords testified that they occupied the rental unit between May 2021 and September 3, 2021, which I will address further below. The landlords stated that their parents could not come to the rental unit due to "health reasons" related to COVID. The landlords stated they had their primary residence in Burnaby and "spent a few weekends" at the rental unit in Osoyoos between May and mid-June of 2021 and then full-time in Osoyoos at the rental property during mid-June to August 2021. The landlords stated that due to a wildfire in the area, they were evacuated for 4-5 days. In August, the landlords stated that cases of COVID were increasing so were concerned about travel restrictions or new orders coming due to COVID. The landlords stated in

August there a strong recommendation for non-essential travel. The landlords admitted that the rental unit was not their primary residence.

The landlords testified they let a Property Manager know that that the unit would be unoccupied for more than they would have liked it to be, so the landlords asked the Property Manager if there was the possibility of “snowbirds” to occupy the property for September, October and November 2021. The landlords also stated that at first they did not agree to re-rent with the Property Manager but later agreed as a family needed the unit and their home insurance did not permit the rental unit to be unoccupied for more than 30 days. The landlords stated that the new family, where one of the family members were offered a job at a school as a teacher in the area but could not find a place to live. The landlords stated they did not agree at first, but the Property Manager said to them “this is it” and the Property Manager also said the teacher really need a place to live.

The landlords then stated they asked themselves “what is the possibility of getting snowbirds in around December, January, February?” and that they also had the insurance issues that the property cannot be left unoccupied for more than 30 days. The new family moved into the rental unit on September 3, 2021 and that the new family was paying \$1,750.00 in rent which included all of the utilities. The landlords stated that the net amount coming to them ended up being less than what the original tenants were paying as their rent did not include utilities. The landlords testified that as of the time of the hearing on May 26, 2022, the family continues to live at the rental unit, and they plan to remain there until the end of the school year.

The landlords also admitted during the hearing that they did not see that the 2 Month Notice listed the reason as “The landlord or the landlord’s spouse”. The landlords confirmed that their plans were to have their parents occupying the rental unit in addition to them and the landlords stated they are taking responsibility for that error. The landlords testified that they intend to use the property once the current tenants vacate. The landlords stated that “I don’t know if we would have given the place to a family if COVID hadn’t happened.”

The tenants’ response to the landlords were that the landlords failed to comply with the reasons stated on the 2 Month Notice so that is basically it. The tenants stated that they are still looking for a place to live and that the male tenant is working out of his truck. The female tenant stated that she is living with family in Salmon Arm. The tenants stated that COVID or not, their rent has gone up substantially.

The tenants stated that they were a family in need too and stated that they were displaced by the landlords and greatly impacted. The tenants stated that the rental unit was not a primary residence for the landlords, and they rented it out, so the rules were not followed under the Act. The landlords replied that they were sorry that they caused hardship, but the 2 Month Notice was issued in good faith and they did not account for COVID getting worse.

The tenants stated they were very reliable tenants and that they would have appreciated being asked to return as tenants if the landlords had a change in plans, but they were never asked. The landlords replied by stating that they talked to a Property Manager and that the original plan was for “snowbirds” and then they encountered a family in need via their Property Manager. The landlords stated “it really wasn’t us” in terms of their Property Manager involvement, which I will address later in this Decision.

### 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.

**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]

Firstly, as the reason stated on the 2 Month Notice was that the landlord or landlord's spouse would be occupying the rental unit and that by September 3, 2021, the landlords re-rented the rental unit to other tenants, I find the landlords failed to comply with the reason stated on the 2 Month Notice.

Given the above, the landlords are left with relying on section 51(3) of the Act which states:

51(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.**

[emphasis added]

Based on the evidence before me, I find the landlords have provided insufficient evidence of extenuating circumstances. COVID began in March 2020 and the 2 Month Notice was not issued until February 10, 2021. Therefore, I am not persuaded that COVID-related issues could not be anticipated or expected during a worldwide pandemic.

Furthermore, the I find the landlords are attempting to place blame on their Property Manager that the landlords themselves contacted. I do not place any blame on the Property Manager, as the sole decision to re-rent is the landlords' decision. The landlords ultimately made the decision to re-rent and the new tenants moved in on September 3, 2021 and continue to reside in the rental unit as of May 26, 2022. Given the above, I find the landlords have failed to prove that they had extenuating circumstances that prevented them from using the rental unit for at least 6 months from April 30, 2021, which was the effective vacancy date listed on the 2 Month Notice. The end of the 6-month period would have been October 31, 2021. Therefore, I find the tenants are entitled to **\$13,800.00** in compensation from the landlords, comprised of 12 times the monthly rent of \$1,150.00 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenants 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 tenants have established a total monetary claim of **\$13,900.00** comprised of \$13,800.00, which is 12 times \$1,150.00 monthly rent, plus the \$100.00 filing fee.

## Conclusion

The tenants' application is fully successful.

I find the landlords failed to use the rental unit for the stated purpose and instead, re-rented the rental unit as of September 3, 2021. I find the landlords have failed to prove extenuating circumstances that prevented them from complying with the reason listed on the 2 Month Notice as the landlords indicated that they would be occupying the rental unit and could not have done so after September 3, 2021 by re-renting the rental unit.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$13,900.00 as indicated above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords are reminded that they can be held liable for all enforcement costs under the Act.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlords.

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 9, 2022

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Residential Tenancy Branch