



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNETC, FFT

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 15, 2021 the Dispute Resolution Package was placed in the Landlord's mailbox. The Agent for the Landlord acknowledged that these documents were located in the Landlord's mailbox.

On October 14, 2021 the Tenant submitted photographs to the Residential Tenancy Branch. The Tenant stated that these photographs were served to the Landlord with the Application for Dispute Resolution. The Agent for the Landlord stated that this evidence was not received.

The Agent for the Landlord and the Tenant agree that the Tenant was informed that the Landlord did not get photographs with the Application for Dispute Resolution. The Tenant stated that she attempted to locate her copies of the photographs for the purposes of re-serving them to the Landlord, but she was unable to locate them.

I find there is insufficient evidence to determine whether the Tenant served the Landlord with photographs on October 14, 2021, as the Tenant contends, or whether the photographs were not served, as the Agent for the Landlord contends. I therefore cannot accept those photographs as evidence for these proceedings.

In circumstances such as these, I would typically adjourn the hearing to provide the Tenant with an opportunity to re-serve her photographs to the Landlord. In these circumstances, however, I find that an adjournment would not benefit the Tenant as she does not have copies of those photographs to re-serve to the Landlord.

On May 25, 2022 and May 26, 2022, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated on May 24, 2022 this evidence was posted on the Tenant's door. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On May 26, 2022 the Landlord submitted a document titled "Notes for the Hearing" to the Residential Tenancy Branch. The Agent for the Landlord stated this document was not served to the Tenant. As this document was not served to the Tenant, it was not accepted as evidence for these proceedings, although the Agent for the Landlord was able to testify about the content of it.

On June 01, 2022 and June 02, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. I note that the content of the photographs submit is similar to the initial photographs submitted by the Tenant, even if they are not the identical photographs. The Tenant stated that this evidence was served to the Landlord on June 02, 2022. The Agent for the Landlord stated that the Landlord has had sufficient time to consider this evidence and it was therefore accepted as evidence for these proceedings, even though it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

The Agent for the Landlord stated that the photographs that were served on June 02, 2022 are very difficult to view. On the basis of the description of those photographs the Agent for the Landlord provided during the hearing, I am satisfied that our photographs are of somewhat similar quality. Although the photographs submitted to the Landlord are black and white, I find that they are of similar quality to the ones I have before me. I note that the photographs are not particularly relevant to the issues in dispute, so their quality is of little relevance.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began in 2017;
- rent was due by the first day of each month;
- at the end of the tenancy the rent was \$1,290.00 plus \$70.00 for utilities;
- the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use which declared that the rental unit must be vacated by October 31, 2019; and
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit will be occupied by the Landlord or a close family member of the Landlord.

The Tenant stated that the tenancy ended when the rental unit was vacated on October 15, 2019. The Agent for the Landlord stated that the tenancy ended when the rental unit was vacated on October 14, 2019.

The Agent for the Landlord stated that:

- the Two Month Notice to End Tenancy for Landlord's Use was served because the Landlord was renovating the kitchen in his own home and he needed a place to reside while his home was kitchen was being renovated;
- the kitchen in the rental unit was renovated after this tenancy ended;
- the renovations began on October 17, 2019 and last for about 5 days;
- the Landlord stated moving into the rental unit in November of 2019;
- she thinks the Landlord began living in the rental unit on, or about, November 05, 2019;

- she believes the Landlord moved out of the rental unit on May 10, 2020;
- in April of 2020 the rental unit was offered for rent on a popular website;
- the rental unit was rented to a third party, effective May 16, 2020.

The Tenant stated that:

- in September of 2021 she spoke with the tenant of the rental unit;
- that tenant told her he moved into the rental unit in the first week of April of 2019;
- the kitchen in the rental unit has been renovated since her tenancy; and
- the tenant she spoke to her in September told her the renovations to the unit were completed just prior to the start of his tenancy in April of 2019.

The Landlord submitted a copy of a tenancy agreement between the Landlord and the party the Tenant spoke with in September of 2021. This agreement declares that the tenancy began on May 16, 2020.

The Landlord submitted an invoice for a kitchen renovation, dated November 11, 2019. The Agent for the Landlord stated that this is the invoice for the renovation in the Landlord's residence. The Agent for the Landlord contends that this invoice supports the Landlord's submission that the Landlord moved into the rental unit because the kitchen in his home was being renovated. The Tenant argues that the invoice does not support the Landlord's submission.

The Landlord submitted utility bills, which are in the name of someone with the same surname as the Landlord. The Agent for the Landlord contends that these bills help to establish that the Landlord moved into the rental unit. The Agent for the Landlord stated that she does not know if these bills were in the Landlord's name during the tenancy. The Tenant stated that utility bills were not in her name during the tenancy.

The Landlord submitted a copy of an agreement signed by the Tenant, in which the Tenant agreed she would not seek further compensation.

### Analysis

On the basis of the undisputed evidence, I find that when this tenancy ended the Tenant was paying monthly rent of \$1,290.00 plus utilities.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use which declared that the unit will be

occupied by the Landlord or a close family member of the Landlord. This notice declared that the rental unit must be vacated by October 31, 2019.

I find that the tenancy ended when the rental unit was vacated on either October 15, 2019 or October 16, 2019. The Tenant filed this Application for Dispute Resolution on October 14, 2021.

Section 51(2) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As outlined in Residential Tenancy Branch Policy Guideline 2A, the onus is on the landlord to establish that they have used the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use for at least six months.

I find that the Landlord has submitted insufficient evidence to establish that the Landlord moved into the rental unit. In reaching this conclusion I was influenced, in part, by the absence of any documentary or verbal evidence from the Landlord that declares the Landlord moved into the rental unit.

In concluding that the Landlord has not met the burden of proof that the Landlord moved into the rental unit, I was influenced, in small part, by the fact the Agent for the Landlord was not certain of when the Landlord moved in/out of the rental unit. Although the Agent for the Landlord testified that she thinks the Landlord moved into the rental unit on November 05, 2019, she clearly was not certain of that date.

When the Agent for the Landlord was asked to declare when the Landlord vacated the rental unit, she initially replied that the Landlord lived in the unit for six months. When asked for the specific date the Landlord vacated, the Agent for the Landlord referred to a calendar and appeared to be counting months, after which she stated that the Landlord moved out in May of 2020. When she was asked for a specific date, she stated that the Landlord moved out on May 10, 2020.

While I recognize that these events occurred some time ago, I would expect the Agent for the Landlord would have obtained the precise move in and move out dates from the

Landlord prior to attending the hearing, given the nature of the claims being made by the Tenant. As it appears the Agent for the Landlord did not have those precise dates, I question the reliability of the dates provided.

In concluding that the Landlord has not met the burden of proof that the Landlord moved into the rental unit, I was not convinced by the Landlord's submission that the Landlord needed to move into the rental unit because the kitchen in the Landlord's residence was being renovated.

The invoice for the kitchen renovations in the Landlord's residence is dated November 11, 2019. As invoices are typically provided when repairs/renovations are completed, I find that this invoice strongly suggests that the renovations to the kitchen in the Landlord's residence were completed by November 11, 2019.

As the renovations appear to have been completed on November 11, 2019, it seems illogical that the Landlord would move into the rental unit on November 05, 2019, given the renovations were completed 6 days later. I find it even more illogical that the Landlord would remain in the rental unit until May of 2020, given that the alleged reason for moving into the unit was to find alternate accommodation during renovations that were completed in November of 2019.

I find that the utility bills submitted in evidence have little evidentiary value.

On the basis of the undisputed testimony, I find that the Tenant paid \$70.00 per month for utilities. I find that this strongly corroborates the Tenant's testimony that utility bills were not in the Tenant's name. It is therefore logical to presume that the utility bills have always been in the Landlord's name or in the name of someone representing the Landlord. As the utility bills are in the name of someone with the same surname as the Landlord and there is no evidence the names on those bills changed in November of 2019, I find they do not help to establish that the Landlord moved into the rental unit.

In reaching this conclusion I have placed little weight on the undisputed testimony that the kitchen in the rental unit was renovated after the tenancy ended. While it is possible that the kitchen in the unit was renovated for the purposes of upgrading and re-renting the unit, it is equally possible that it was renovated to make the unit more suitable for the Landlord.

On the basis of the testimony of the Agent for the Landlord and the tenancy agreement

submitted in evidence, I find that this unit was re-rented to a third party on May 16, 2020. I find this evidence more compelling than the Tenant's testimony that the third party moved into the unit in April of 2019. The Tenant's testimony is based on information provided by the new tenant, which is less reliable because it is subject to the variety of frailties of hearsay evidence.

Regardless of the evidence that establishes the rental unit was not re-rented until May 16, 2019, I find that the Landlord has failed to establish the Landlord lived in the rental unit for any period of time between October 16, 2019 and May 16, 2020. I therefore find that the Landlord is subject to the penalty imposed by section 52 of the *Act* and that the Landlord must pay the Tenant \$15,480.00, which is the equivalent of 12 times the monthly rent.

In adjudicating this matter I have placed no weight on the document signed by the Tenant on October 16, 2019 which declares, in part, that the compensation outlined in the document is "fair" and that she "will not be seeking additional compensation after my move out date". I have placed no weight on this document, in part, because the compensation provided to the Tenant does not address the compensation contemplated by section 52 of the *Act*.

More importantly, section 5 of the *Act* stipulates that landlords and tenants may not avoid or contract out of this *Act* or the regulations and that any attempt to do so is of no effect. Even if the document dated October 16, 2019 could be construed as an agreement that the Tenant would not seek compensation pursuant to section 52 of the *Act*, I would conclude that the agreement would have no effect, as section 5 of the *Act* prevents the parties from contracting out of the *Act*.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the cost of filing this Application.

### Conclusion

I find that the Tenant has established a monetary claim of \$15,580.00, which includes \$15,480.00 for compensation pursuant to section 51(2) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$15,580.00. In the event the Landlord does not voluntarily comply with this order, it

may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: June 04, 2022

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Residential Tenancy Branch