



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, MNRT, FFT

### Introduction

On April 23, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 33, 51, and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for October 22, 2021. The original hearing was adjourned as per an Interim Decision made by a different Arbitrator, dated October 22, 2021, and then adjourned again as per the Interim Decision dated March 21, 2022. The final, reconvened hearing was set down for June 13, 2022 at 1:30 PM.

The Tenant attended the final, reconvened hearing, with E.W. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of documents. As such, all parties’ evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are

described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on May 31, 2019. Rent was established at \$1,075.00 per month and was due on the first day of each month. A security deposit of \$525.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

At the reconvened hearing, the Tenant advised that she was now only seeking compensation in the amount of **\$1,075.00** for April 2019 rent and **\$12,900.00** because the Landlord did not use the property as per the reason on the Two Month Notice to End Tenancy for Landlord's Use of Property. The Landlord advised that he understood the nature of the Tenant's claims and was prepared to proceed.

The Tenant advised that she was seeking compensation in the amount of **\$1,075.00** because there was a flood in the rental unit in February 2019. She stated that she paid for April 2019 rent in full because she thought the repairs were complete, and it was her belief that she was not required to pay the Landlord this rent because this repair was a renovation. She mentioned a four-month timeframe and being eligible for a month's compensation; however, she could not remember if the Landlord ever served her with a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit, nor could she remember many details of why she was seeking this compensation. As well, she made mention of a toxic carpet that was installed in March 2019.

The Landlord advised that there was a flood in February 2019 due to a sump pump failure, and that the rental unit was remediated through insurance. This was not a renovation. He stated that February 2019 rent was reimbursed to the Tenant due to this emergency situation, that the insurance company declared the rental unit fit for

occupation on March 1, 2019, and that April 2019 rent was paid by the Tenant as the rental unit was rendered habitable again. He denied ever serving the Tenant with a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit.

However, all parties agreed that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property on March 24, 2019. The reason the Landlord checked off on the Notice was because "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 effective end date of the tenancy was noted on the Notice as May 31, 2019.

The Landlord advised that the Tenant did not pay rent for May 2019 as she was entitled to the one month's compensation due to the Notice being served. He testified that his stepson moved into the rental unit in late June of 2019, and that he lived in the rental unit until four months prior to the reconvened hearing. He directed me to a signed letter, dated March 1, 2022, where his stepson confirmed that he moved into the rental unit in late June 2019. The Landlord referenced an email, dated September 15, 2021, from a neighbour who confirmed that the Landlord's stepson was observed "coming and going" from the rental unit. He then cited a signed letter, dated September 22, 2021, from other tenants of the property who confirmed that the rental unit was used by the Landlord and his stepson.

E.W. asked the Tenant questions, which related to the history of the tenancy and emphasized the contentious manner with which the Tenant and Landlord engaged. E.W. then asked the Landlord questions, and she specifically pointed to the Landlord's documentary evidence of the signed letter, dated September 22, 2021, where it was noted that the rental unit was "vacant since the Spring of 2019." In addition, the people that wrote this letter stated that they saw the Landlord and his stepson only "utilize this suite short term, due to covid circumstances." As well, she referenced her written submissions to support her position that the Landlord did not use the property for the stated purpose on the Notice.

The Landlord reiterated that his stepson moved into the rental unit, and that he was also required to move in with his stepson for 14 days because his wife and family had to quarantine in his own house.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I note that when establishing if monetary compensation is warranted, Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In addition, I also note that both parties’ documentary evidence was disorganized and neither party was familiar with their documentary evidence submitted. Neither the Tenant nor the Landlord were able to directly point me to the specific pieces of evidence that would support their submissions. I note this because I am not able to go through the parties’ evidence to piece together their random documents, and formulate their cases for them.

With respect to the Tenant’s claim for compensation in the amount of \$1,075.00 for April 2019 rent, the burden of proof rests with the Tenant to substantiate this claim. While the Tenant made mention of a four-month timeframe and that she was eligible for compensation, it was not entirely clear what she was referring to in this instance. Both parties agreed that there was never a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit served to the Tenant. It appeared as if the Tenant was of the belief that the restoration was a renovation and that she was entitled to some sort of compensation. However, given that the specific Four Months' Notice to

End Tenancy For Demolition or Conversion of a Rental Unit was never served to her, I am not satisfied from her vague submissions that there was any compensation that was owed to her for April 2019 rent. As such, I dismiss this claim in its entirety.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing this Notice, despite the Landlord's name not being included on the Notice, I am satisfied that all parties understood who served the Notice. As such, I have amended the Notice under Section 68 of the *Act* to correct this deficiency.

I find it important to note that the Notice was served on March 24, 2019, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

I also note that the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed

through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

When reviewing the totality of the evidence and testimony, I have before me documentary evidence submitted by the Landlord, which he believed corroborated his submissions that he used the rental unit, for the stated purpose for at least six months, after the effective end date of the Notice, in accordance with the *Act*.

In reviewing E.W.'s submissions, I agree that the signed letter from the Landlord's other tenants, dated September 22, 2021, directly contradicts the Landlord's submissions that the rental unit was occupied by the Landlord's stepson full-time, as they wrote in that letter that they observed the Landlord and stepson only "utilize this suite short term, due to covid circumstances." I find that this letter is not consistent with the Landlord's testimony that his stepson moved into the rental unit and occupied it for at least six months after the effective date of the Notice. As well, these tenants make note of the Landlord and stepson maintaining the property; however, I note that maintaining the property is not the same as the Landlord or stepson moving in and living in the rental unit.

Moreover, I note that the Landlord submitted an email from his neighbour, dated September 15, 2021, where it stated that the neighbour had seen the Landlord and his stepson "coming and going down the path to the suite's entrance..." While I acknowledge that this neighbour saw the Landlord and his stepson on the property, I do not find that this definitively demonstrates that he observed the Landlord or stepson occupy (i.e., live in) the rental unit.

Furthermore, I accept that the Landlord may have moved into the rental unit for a short period of time due to having to quarantine as a result of a COVID precaution. However, the effective date of the Notice was May 2019 and any information about quarantining was not readily distributed until approximately the spring of 2020, which is nearly a year after the effective date of the Notice. As such, had the Landlord occupied the rental unit anytime after the spring of 2020, this information would be irrelevant to the considerations I have to make because this quarantine period would have been well past the 6-month timeframe after the effective date of the Notice that the Landlord was required to occupy the rental unit. In addition, there is no evidence that this quarantine lasted more than a few weeks.

The only documentary evidence that the Landlord directly pointed me to, that supported his submissions regarding fulfilling the reason on the Notice, was a signed, three-line statement from the Landlord's stepson. While I do give this brief statement some weight, I reiterate that the burden for proving that the Landlord used the rental unit for the stated purpose rests on the Landlord. I find that the Landlord could have easily

submitted any number of pieces of documentary evidence that would clearly demonstrate that his stepson moved into the rental unit within a reasonable period of time after the effective date of the Notice and then occupied it for at least six months (e.g. change of address on a driver's license, utility bills, mail, pictures of him occupying the rental unit, etc.).

Given that the burden of proof is on the Landlord, while I acknowledge that he does have one letter from his stepson, I find that the other supporting documentary evidence that he submitted is not consistent with this one, brief statement. These discrepancies cause me to assign less weight to the legitimacy of the stepson's statement, and consequently, cause me to doubt the reliability of the Landlord's submissions.

As there is little compelling or persuasive documentary evidence to support, on a balance of probabilities, that the rental unit was occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*. I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$12,900.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$13,000.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in 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 24, 2022

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Residential Tenancy Branch