



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT (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 \$23,352.00, for 12 months' compensation due to the landlord failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 5, 2021 (2 Month Notice).

The tenant and an agent for the landlord, SMC (agent) attended the teleconference hearing. All participants were affirmed and the hearing process was explained, and the parties were given an opportunity to ask questions. 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/or 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.

As 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. Both parties also confirmed that they had the opportunity to review the evidence served upon them by the other party.

### 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.

### Issue 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?

### Background and Evidence

A copy of the first tenancy agreement was submitted in evidence. The tenancy began on November 1, 2017 and consisted of several one-year fixed term tenancy agreements, the last started January 1, 2021 with the fixed-term end date being December 31, 2021. Original monthly rent was \$1,900.00, which was increased during the tenancy to what the parties agreed was the final monthly amount of \$1,949.40 per month and was always due on the first day of each month.

There is no dispute that the tenant was served with the 2 Month Notice dated March 5, 2021, and that the 2 Month Notice had an effective vacancy date of May 31, 2021. The 2 Month Notice was not served until March 15, 2021. The tenant did not dispute the 2 Month Notice and vacated the rental unit early on March 31, 2021, and stated that they returned the rental unit keys on April 11, 2021.

The reason stated on the 2 Month Notice has been copied and pasted below:

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.	
	The landlord or the landlord's spouse
<input checked="" type="checkbox"/>	The child of the landlord or landlord's spouse
	The father or mother of the landlord or landlord's spouse
	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.
	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.
	The tenant no longer qualifies for the subsidized rental unit.

The agent, who is also the son of the landlord and is the same person identified on the 2 Month Notice as the “child of the landlord” testified that they moved into the rental unit on April 24, 2021. The agent stated that although they planned to be there for 2 to 3 years, they had an argument with their parents and in June 2021, decided to purchase a home in Burnaby. The agent confirmed they vacated the rental unit on July 10, 2021. The agent stated that the rental unit was vacant between July 10, 2021, and October 1, 2021, when the landlord took the advice of their new property manager to re-rent the rental unit.

The agent confirmed during the hearing that the new tenants were paying \$2,400.00 per month and moved in October 1, 2021. The applicant tenant was paying \$1,949.40 in monthly rent when they were issued the 2 Month Notice. The agent admitted that they should have not moved back home, and that the landlord’s property manager gave the landlord bad advice to re-rent the rental unit in October 2021. The agent testified that his mother did not have any bad intentions with the tenant and that they liked the tenant.

The tenant stated that they took care of the property, and it was very hard to find a new rental after being issued the 2 Month Notice. The tenant also stated that the landlord failed to use the rental unit for the statement purpose for a minimum of 6 months and that based on section 51 of the Act, the landlord owes the tenant compensation. The tenant also stated that it why they had a fixed-term tenancy year after year. As the parties agreed that the last fixed-term tenancy was from January 1, 2021, to December 31, 2021, I will address these dates later in this decision.

The parties confirmed that they did not have a signed mutual agreement to end the tenancy earlier than the fixed-term date. The agent presented a letter from the tenant(s) living in the lower rental unit who confirmed that the agent vacated 3 months after moving into the rental unit.

### 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, I caution the landlord not to issue a 2 Month Notice in the future that has an effective vacancy date that is before the end of the fixed-term tenancy, which in the matter before me, the landlord issued.

Secondly, as the effective vacancy date was listed as May 31, 2021, I find the landlord had to have used the rental unit for their son (the agent, SMC) for a minimum of 6 months, which I find the landlord failed to do as SMC confirmed that they vacated the rental unit on July 10, 2021, which is only 1 month and 10 days after the effective vacancy date listed on the 2 Month Notice.

Finally, the only other option for the landlord is to rely 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]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy (PG 50) defines extenuating circumstances as follows:

## 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.

I find that PG 50 takes a reasonable approach in defining extenuating circumstances and I find the landlord's son having an argument with the landlord **does not** meet the definition of an extenuating circumstances. Therefore, I find the landlord could not re-rent the rental unit until after November 30, 2021. As the landlord re-rented the rental unit for more money (\$2,400.00 versus \$1,949.40) as of October 1, 2021, I find the landlord has failed to provide sufficient evidence that they complied with the reason stated on the 2 Month Notice for a minimum of 6 months and have failed to meet the definition of extenuating circumstances.

Given the above, I find the tenant's claim is fully successful and I grant the tenant **\$23,392.80** in compensation from the landlord, comprised of twelve times the monthly rent of \$1,949.40 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 **\$23,492.80** comprised of \$23,392.80 as indicated above, 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 for a minimum of 6 months after the effective vacancy date listed on the 2 Month Notice. In addition, I find the landlord has also failed to prove extenuating circumstances that prevented them from complying with the reason listed on the 2 Month Notice.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$23,492.80 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. The landlord is reminded that they can be held liable for all enforcement costs related to the monetary order under the Act.

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

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 6, 2022

---

Residential Tenancy Branch