



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenants' application, filed on December 17, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$15,000.00 for compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51.

The landlord, the landlord's advocate, and the two tenants, tenant JH ("tenant") and "tenant IB," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 59 minutes from 1:30 p.m. to 2:29 p.m.

The landlord intended to call her husband as a witness, so he was excluded from the outset of this hearing. The landlord did not recall him to testify at this hearing.

The landlord, the landlord's advocate, and the two tenants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she owns the rental unit and provided the rental unit address. She stated that she wanted her advocate to be the primary speaker for her at this hearing.

The tenant identified himself as the primary speaker for both tenants at this hearing and tenant IB agreed with same.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, the landlord’s advocate, and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing. Neither party made any adjournment or accommodation requests.

Both parties were provided with multiple opportunities to settle this application at the beginning and end of this hearing. The tenants repeatedly affirmed that they did not want to settle this application with the landlord, and they wanted me to make decision. The tenants repeatedly affirmed that they were prepared for their application to be dismissed without leave to reapply and to receive \$0 in compensation, if that was my decision.

The landlord’s advocate confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ application and both tenants were duly served with the landlord’s evidence.

The tenant confirmed personal receipt of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property, dated August 26, 2021 (“2 Month Notice”). The landlord’s advocate confirmed the above date and service method. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s 2 Month Notice.

During this hearing, the tenant asked if the tenants could add a monetary claim to this application, to ask for the return of the \$100.00 filing fee that they paid for this application. I informed the tenant that I would not amend the tenants’ application to add the above claim. I notified him that the tenants did not apply for it and they had ample time to do so, since they filed this application on December 17, 2022, over 7 months prior to this hearing on July 25, 2022. The tenants did not file an amendment form to request this claim prior to this hearing.

Issue to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Background and Evidence

While I have turned my mind to the documentary and digital evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2020 and ended on October 1, 2021. The tenant was living in the rental unit since December 16, 2016. On June 1, 2020, tenant IB moved in and both tenants signed a written tenancy agreement with the landlord. Monthly rent of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants and it was returned in full to the tenants by the landlord. The rental unit is the basement suite of a house, where the landlord occupied the upper suite of the same house with her husband during this tenancy.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is December 1, 2021. The reason indicated on the 2 Month Notice was:

- *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 family member will occupy the unit.*
  - *The child of the landlord or landlord's spouse.*

The tenant stated the following facts. The tenants seek compensation under section 51(2) of the *Act* for twelve months' rent compensation of \$1,250.00, totalling \$15,000.00. The landlord did not use the rental unit for the purpose on the 2 Month Notice, so the tenants are entitled to compensation.

The tenant testified regarding the following facts. On July 3, 2021, the tenants talked with the landlord about the rent increase as per the provincial amount. Both parties

agreed that the provincial rent increase amount was low. The tenants agreed to pay a rent increase of \$60.00 per month instead of the \$20.00 provincial amount. There were ground rules set with the \$60.00 rent increase but the verbal agreement was broken. On July 3, 2021, the lease was missing the second page regarding the rent increase, so the tenants requested the full contract from the landlord before signing it because they wanted the complete lease with the \$60.00 rent increase. The tenants were surprised when they were provided with the end of tenancy notice by the landlord. The tenants recorded evidence from the landlord's daughter saying that she was going to university to complete her masters degree. In the summer, there were forest fires in the area where the landlord was building her house. The landlord said that she could not have her daughter come upstairs. The landlord's daughter was supposed to move into the rental unit, but the landlord said there were unforeseen circumstances with the weather. The tenants agreed that the landlord's daughter was supposed to move into the rental unit. The tenants scrambled and found a place for October 1, 2021. After 2.5 months, the rental unit was up and running on Airbnb. On March 16, 2022, the tenant sent evidence to the landlord and the RTB regarding the Airbnb listings, showing the rental unit was fully furnished, the landlord bought new furniture, and the landlord renovated the unit. This was an "unfaithful" agreement. The Airbnb occurred within six month period after the tenants left the rental unit. The landlord used the excuse that her daughter was supposed to move into the rental unit, but she knew that she had no interest in doing so because it was a one-bedroom suite for her and her fiancé.

The tenant stated the following facts. The tenants were not paying the provincial average amount for the rent increase so that financial benefit was removed. The landlord claimed that there were delays due to covid, the forest fires, and higher lumber costs. The floods in November 2021 were irrelevant because there were delays on the project all summer in 2021. The landlord's developer said that the construction for the landlord's property began on January 12, 2021 and it was supposed to be completed by August or September 2021. The developer claimed that it was not completed because of forest fires and covid but the landlord knew the supply chain delays before the tenants left. The tenants submitted lots of evidence and hope that the Arbitrator looks at it. The tenants submitted the Airbnb listing from December 2021. After receiving the tenants' evidence package from March 16, 2022, the landlord took down the Airbnb listing and said she had a month-to-month rental. The landlord's daughter was supposed to use the rental unit to go to school and for her job as a teacher. The landlord was "unfaithful," provided conflicting evidence, and the delays were known before. The tenants received the statement from the landlord's daughter, which is inaccurate, as per the tenants' audio recording. The tenants have not talked to the landlord's daughter since the notice to end tenancy was issued. It seems that the

landlord's daughter has a bigger place, but the rental unit was smaller. However, the landlord's daughter said that she could not live upstairs because of the forest fires and covid. The landlord's daughter claimed that she thought she would have use of the full house.

Tenant IB stated that on August 26, 2021, the landlord said that her daughter would move into the rental unit because of the delays but then the landlord "flipped" and said that her daughter could not move in because of the delays.

The landlord's advocate stated the following facts. The landlord disputes the tenants' entire application. The landlord provided evidence with exhibits. In exhibit B, this case hinges on the landlord's purchase of a property in a different city. On February 19, 2021, the contract of purchase and sale ("CPS") stated that the project is supposed to be completed by September 2021. There was a right of refusal until December 2021. The landlord expected to spend early 2022 building her house because her husband is a builder and they expected to be spending significant time at the property in the other city. The landlord's daughter was supposed to move into the rental unit and use the landlord's upstairs unit while the landlord was away. The landlord's daughter was supposed to look after a separate Airbnb suite in the house and the landlord's dog, after she moved into the rental unit. The landlord's daughter is studying at university, which is located closer to the rental unit. The landlord's daughter provided a statement in exhibit C, which outlines her reasons. The landlord gave the 2 Month Notice to the tenants on August 26, 2021. There were "inklings" that there might be delays regarding the landlord's project, but there were no delays for sure. The landlord expected to go to the other city to complete her project in early 2022. The landlord gave the tenants until December 1, 2021 to find a place. Within five days of receiving the 2 Month Notice, the tenants said that they were going to move out and provided a notice to the landlord on September 1, 2021 to move out by October 1, 2021. The tenants indicated that they were happy, and they found a two-bedroom apartment with more space than the rental unit.

The landlord's advocate stated the following facts. The landlord's developer told the landlord that there were more issues, including the forest fires and covid to deal with. The landlord still expected things to happen for the project to be completed. The landlord provided a statement regarding her reasons. On November 21, 2021, there were floods that blocked materials from reaching the landlord's new property. The landlord provided an article regarding the floods. The landlord's development was "seriously stalled." The landlord could not spend spring 2022 in the other city to build her property. Exhibit H of the landlord's documents shows the amendment to the CPS,

which extends the date for another year. The landlord did not want this situation to occur. The landlord issued the 2 Month Notice to the tenants in good faith, expecting to be at the new property by spring 2022, but the project was delayed. It was not practical for the landlord's daughter to use the rental unit, as the suite is smaller than she currently has, and her classes were moved online, due to covid, so she did not have to attend in person. The landlord is able to manage her dog, house, and security on her own. The tenants already moved out, so they could not move back to the rental unit, as they found a place to rent somewhere else. The landlord made the rental unit available. The Arbitrator should look at all of the exhibits submitted by the landlord, as they show that there were circumstances beyond the landlord's control.

Tenant IB stated the following facts. The tenants already received the landlord's evidence and reviewed it. The tenants provided audio recordings on August 26, 2021, where the landlord's husband said that due to delays, his daughter wanted more privacy to live downstairs in the basement rental unit.

The landlord's advocate stated that the landlord was aware of some delays at the time but was not expecting what happened to occur.

The landlord testified regarding the following facts. There were floods and the addendum in December 2021, extended it by one year. The landlord could not afford the rental unit being empty. Therefore, the landlord listed the rental unit for Airbnb in December 2021 and it was used for approximately 2.5 months from January to March 2022. The landlord took the rental unit off Airbnb in March 2022 and began a month-to-month tenancy with a new tenant as of June 2022. The landlord did not sign any long-term contracts with any tenants.

The tenant stated the following facts. It was clear that things were on hold and would not continue with the landlord's project as of August 26, 2021, when the tenants were issued the 2 Month Notice by the landlord. The tenants provided audio recordings that show that if there were no delays or issues, the landlord's daughter would be upstairs while the landlord left to the other city for her project. The covid pandemic has been ongoing for the last couple of years and school courses have been online for a long time, so this is not new. The landlord's daughter says she has a job in the area where the rental unit is located. The landlord used the rental unit for Airbnb and for a month-to-month tenancy, so she wanted financial profit.

## Analysis

### Tenants' Application and Rules

At the outset of this hearing, I informed the tenants that, as the applicants, they are required to present their application and evidence, in order for me to make a decision regarding their application. The tenants affirmed their understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which they served to the landlord. The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

*...*

#### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenants did not properly present their application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During this hearing, the tenants failed to properly go through their claims and evidence submitted in support of their application. The tenant mentioned submitting documents but did not review them sufficiently in specific detail during this hearing. The tenants simply indicated that they hoped I would review all of their evidence after this hearing.

This hearing lasted 59 minutes, so the tenants had ample time and multiple opportunities to present their application. During this hearing, I repeatedly asked the tenants if they had any other submissions or evidence to present, regarding their application and in response to the submissions of the landlord and her advocate.

The tenants did not even indicate what their application was for, what section of the *Act* they were applying under, or the details of the 2 Month Notice, until I specifically asked them about it at the end of this hearing. The tenant stated during this hearing that he was “not the best at explaining” the details of this application.

*Findings*

Section 49(3) of the *Act* states the following:

*(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use



the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

*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.*

It is undisputed that the tenants vacated the rental unit on October 1, 2021, pursuant to the 2 Month Notice. It is undisputed that the landlord issued the 2 Month Notice to the tenants for the landlord's daughter to occupy the rental unit after the tenants moved out. It is undisputed that the landlord's daughter qualifies as a close family member (child), who is entitled to occupy the rental unit, pursuant to the 2 Month Notice.

Section 51(3) of the Act states the following:

*(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.*

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

#### ***E. EXTENUATING CIRCUMSTANCES***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be*

*unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

#### ***E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE***

##### ***Residential Tenancy Act***

*A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*
- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.*

*Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

I am required to consider the above section 51(3) of the Act, regardless of whether it is raised by any party during this hearing.

On a balance of probabilities and for the reasons stated below, I find that the landlord met her onus of proof and provided sufficient evidence that extenuating circumstances prevented her from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice.

I accept the affirmed testimony of the landlord and her advocate during this hearing. I also accept the landlord's documentary evidence submitted for this hearing. I find that the landlord provided sufficient documentary evidence for this hearing, including statements from the landlord, the landlord's daughter, and the landlord's developer, and the CPS and amendment. The tenants did not dispute the authenticity of the above documents during this hearing.

I find that the circumstances surrounding the delay of the landlord's purchase, development, and building of a new house on a new property for the landlord's use in a different city, were unforeseen events that could not have been predicted or controlled by the landlord. I find that the landlord's daughter only intended to occupy the rental unit, if the landlord and her husband would be spending most of their time out of the rental unit, in a different city, to develop their new property.

I find that the landlord's daughter did not occupy the rental unit, due to circumstances beyond the control of the landlord. I accept that the landlord's daughter intended to move into the rental unit with her partner, in order to be closer to her university where she was studying, to care for the landlord's dog and house, to manage and clean a separate Airbnb suite in the house, and to use a bigger space, including the basement rental unit and upper portion of the house. I accept that the landlord's daughter, as per her written statement, intended to sell the apartment building where she currently resides with her partner and permanently move into the rental property, once the landlord moved to her new house.

I find that the landlord could not have known at the time that she issued the 2 Month Notice to the tenants in August 2021, that unforeseen events would occur, including forest fires in the summer of 2021, extensive flooding in November 2021, and an ongoing worldwide covid-19 pandemic that is unpredictable and constantly changing. The fires and flooding are natural disasters which cannot be controlled by anyone. The covid-19 pandemic cannot be controlled by anyone and has had several resurgent "waves" and changing restrictions and requirements imposed by the provincial government on local residents and businesses at different times since March 2020.

While reasonable delays could be anticipated for any housing project, particularly during the covid pandemic, the forest fires and flooding caused longer delays that could not be reasonably anticipated by anyone. The landlord provided an amendment to the CPS, dated December 23, 2021, after the effective date of the 2 Month Notice of December 1, 2021, showing that the project was extended for another year. As per the letter, dated May 19, 2022, from the landlord's developer, construction on the landlord's project was started in January 2021 and was estimated to be completed by August/September 2021. As per the letter, the project was further delayed to 2022, due to supply chain issues for receiving necessary construction materials because of covid and flooding in November 2021 which made delivery of materials "impossible," and necessary products such as an electrical kiosk and generator were delivered in April 2022, despite being ordered in June 2021. The letter indicates that full-time construction was occurring in May 2022, as contractors were on site since January 2022.

I find that the landlord's actions of using the rental unit as a temporary Airbnb and for a month-to-month tenancy were reasonable, given the extenuating circumstances, after the tenants moved out. I find that the landlord was attempting to mitigate her financial losses, as she was no longer receiving rent from the tenants after they moved out and she had to re-rent the unit to avoid financial problems. I find that the landlord's re-rental of the unit is temporary, since she cannot predict when her construction project will be completed, whether there will be further delays, or when she will leave the rental property, which is why no permanent or fixed term tenancy agreement or contract was signed.

I note that the tenants chose to vacate the rental unit early on October 1, 2021, two months prior to the effective date on the 2 Month Notice of December 1, 2021. This is the tenants' right to do so, as per the *Act*, provided that they give sufficient written notice to the landlord. However, as per the landlord's advocate's testimony, it was too late to rescind the 2 Month Notice or to recall the tenants to move back into the rental unit, once they had secured a new place and moved into it. I note that the landlord provided over three months notice for the tenants to vacate, as the 2 Month Notice was dated and served to the tenants on August 26, 2021. I find that this shows the landlord's intention to provide as much notice as possible, as per her testimony, for the tenants to secure new housing.

I find that the tenants provided insufficient evidence that the landlord knew about the delays when she issued the 2 Month Notice to the tenants and that delays during the covid-19 pandemic were predictable. I find that the tenants provided insufficient

documentary and digital evidence for this hearing. As noted above, they did not review their documents or digital evidence in any specific detail during this hearing.

On a balance of probabilities and for the reasons stated above, I find that the tenants are not entitled to twelve times the monthly rent of \$1,250.00, totalling \$15,000.00, from the landlord. Accordingly, the tenant's application is dismissed without leave to reapply.

### Conclusion

The tenants' application is dismissed without leave to reapply.

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: July 29, 2022

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Residential Tenancy Branch