



# 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 by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 15, 2021 (the "2 Month Notice") pursuant to sections 51(2) and 67; and
- authorization to recover the filing fee of the Application from the Landlords pursuant to section 72.

The two Landlords ("SB" and "JB") and the two Tenants ("JC" and "KB") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

JC stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on each of the Landlords in-person in late November 2021 but could not recall the exact date of service. JB acknowledged the Tenants served each of the Landlords with the NDRP Package in-person in late November 2021. I find the Tenants served the NDRP Package on each of the Landlords pursuant to the provisions of sections 88 and 89 of the Act.

JB stated the Landlords served their evidence on JC in-person on April 9, 2022. I find the Landlords served their evidence on the Tenants in accordance with section 88 of the Act.

### Issues to be Decided

Are the Tenants entitled to:

- compensation from the Landlords in relation to the 2 Month Notice?
- recover the filing fee of the Application from the Landlords?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on July 31, 2020, on a month-to-month basis, with rent of \$820.00 payable on the 1<sup>st</sup> day of each month. The parties acknowledged the Tenants paid a security deposit of \$400.00 to the predecessor landlord who in turn transferred it to the Landlords.

JC submitted into evidence a copy of the 2 Month Notice that stated the effective for move-out was May 31, 2021. JC stated the Tenants vacated the rental unit on May 30, 2021. The 2 Month Notice stated the reason for ending the tenancy was the Landlord, or the Landlord's spouse, would occupy the rental unit.

JB stated that, after the Tenants vacated the rental unit on May 30, 2021, the Landlords used the rental unit for a variety of purposes. Those purposes included using it for office space, for a cool area for the Landlords' husky dog, as a cool gym area for JC during the summer, to host guests and for social gatherings. Both JC and SB stated they used the rental unit for the purpose stated in the 2 Month Notice until they rented it to new tenants commencing on December 1, 2021, being six months after the effective date of the 2 Month Notice.

JC stated JB was required to leave for military service in January 2021. JC stated that, during JB's absence, she and SB had a close personal friendship and she provided support to SB during JB's absence. JC stated the Landlords served the Tenants with the 2 Month Notice and the Tenants vacated the rental unit on May 30, 2021. JC stated JB's mother stayed in the upper level of the residential property when she visited from April 23, 2021 to May 26, 2021. JC stated a friend of the Landlords stayed in the upper level of the residential property from May 29 to June 26, 2021. JC stated another friend of the Landlords stayed in the upper level of the residential property from June 26 to

August 23, 2021. JC submitted into evidence copies of online advertisements that advertised the availability of the renovated rental unit for \$1,200.00 per month. JC stated there was already a gym in the garage of the residential premises and there was no urgency to set up a gym in the rental unit.

JB stated he preferred the gym and an office in the rental unit as, being located in the basement, it was cooler during the summer.

JC stated it was the Tenants' position that the Landlords were not acting in good faith when they served the 2 Month Notice on the Tenants and that they have not used the rental unit for the purposes stated in the 2 Month Notice.

### Analysis

Pursuant to Rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. I find the testimony of the Landlords and Tenants to be credible and forthcoming.

The Tenants seek \$9,940.00 compensation pursuant to section 51(2) of the Act. The general premise of the Tenants' testimony and submissions was there was no need for the Landlords to use the rental unit for such things as office space and a gym and that all of their guests stayed upstairs. The Tenants argued the Landlords were not acting in good faith when they served the 2 Month Notice on them and the Landlords have not used the rental unit for the purposes stated in the 2 Month Notice.

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

[...]

- (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

- (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.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Pursuant to section 49(8), the Tenants had the option of making an application for dispute resolution to dispute the 2 Month Notice on the grounds the Landlords did not

intend in good faith to occupy the rental unit. Instead, the Tenants accepted the 2 Month Notice and vacated the rental unit on May 30, 2021. As such, the provisions of section 49(3) regarding the requirement that a landlord intend in good faith to occupy the rental unit do not apply to the issues being considered at this hearing.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...does not establish that*
- (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
  - (b) *the rental unit, except in respect of the purpose specified in section 49(6) (a), has been 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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...from
- (4)
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
  - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

In contrast to section 49(3) of the Act, section 51(2) does not involve a consideration of whether the Landlords were acting in good faith to use the rental unit for the purpose stated in the Two Month Notice. Instead, section 51(2) requires a landlord to pay compensation to a tenant where the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period of time and has been used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

*Residential Tenancy Policy Guideline 50* (“PG 50”) addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

### **Reasonable Period**

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. [...]

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. *For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.* For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

### **Accomplishing the Purpose/Using the Rental Unit**

*Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.*

*Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.* For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

[...]

*A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months*

[emphasis in italics added]

The Landlords stated they used the rental unit for office space and a gym area as it was cooler during the summer. The Landlords also stated the rental unit was used for guests and social gatherings. The Landlords did not dispute the Tenants testimony that the Landlords' guests stayed upstairs. However, there was no evidence the Landlords used the rental unit for short term rentals or sold the rental unit or left the rental unit empty during the six-month period after the effective date of the 2 Month Notice commencing on June 1 through to November 30, 2021.

Based on the foregoing, I find the Landlords used the rental unit for the purpose stated in the 2 Month Notice within a reasonable period after the effective date of the notice and that the rental unit was used for that stated purpose for 6 months duration commencing on June 1, 2021. Based on the foregoing, I find the Landlords are not required to pay the Tenants an amount that is equal to 12 times the monthly rent payable under the tenancy agreement. As such, I dismiss the Application in its entirety without leave to reapply

### Conclusion

The Application is dismissed in its entirety 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: August 2, 2022

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Residential Tenancy Branch