



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNETC FFT**

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 Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 30, 2021 (the "2 Month Notice") pursuant to sections 51(2) and 67; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Landlord and the two Tenants ("RM" and "MM") 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. A witness ("SS") was called during the hearing by the Landlord to provide testimony.

RM stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on the Landlord by registered mail on January 8, 2022. RM provided the Canada Post receipt and tracking number to corroborate her testimony on service of the NDRP Package on the Landlord. The Landlord acknowledged she received the NDRP Package. I find the Tenants served the NDRP Package on the Landlord pursuant to the provisions of sections 88 and 89 of the Act.

### Preliminary Matter – Service of Landlord's Digital Evidence on Tenants

The Landlord stated she served her evidence in a conspicuous place in front of the Tenants' door, but she was unclear as to the date of service. RM stated the Tenants received the Landlord's evidence in front of the door on June 27, 2022. RM stated that,

pursuant to section 90 of the Act, the Tenants were deemed to have received it on June 30, 2021 and, as a result, the Landlord's evidence was served late.

The provisions of section 90 do not apply if it can be demonstrated that the recipient of the document(s) received the document(s) on an earlier than the date calculated pursuant to section 90. RM admitted the Tenants reviewed the Landlord's evidence on June 27, 2022. As the actual date the Tenants received the Landlord's evidence was June 27, 2022, the provisions of section 90 do not apply. Based on the foregoing, I find the Tenants received the Landlord's evidence on June 27, 2022, being more than 7 days before the hearing. As such, I find the Landlord's evidence was served on the Tenants in accordance with the provisions of section 88 of the Act on June 27, 2022.

RM stated the Tenants do not currently have a computer and they were unable to view the files on the USB stick provided in the Landlord's evidence package. The Tenants did not provide an explanation for why they did not attempt to review the Landlord's evidence on a different computer or advise the Landlord that they were unable to view it. Rules 3.10.5 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

### **3.10.5 Confirmation of access to digital evidence**

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

*Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.*

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

There was no evidence the Landlord confirmed with the Tenants that they had playback equipment or otherwise able to gain access to the Landlord's evidence that was provided to the Tenants on a USB memory stick. As such, I find the Landlord's evidence is not admissible for the hearing. However, the Landlord was given the opportunity to provide oral testimony on the contents of the digital evidence.

#### 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?

#### 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.

RM submitted into evidence a copy of the tenancy agreement dated September 29, 2004 between the two Tenants and the predecessor landlord. The Landlord stated the rental unit was purchased by her from the predecessor landlord on May 1, 2021. The parties agreed the tenancy commenced on October 1, 2004, on a month-to-month basis, with rent of \$1,350.00 payable on the 1<sup>st</sup> day of each month. The Tenants were to pay a security deposit of \$675.00 by November 1, 2004. The Landlord stated the rent was \$1,350.00 per month at the time the tenancy ended. The Landlord stated she received the security deposit from the predecessor landlord. The parties agreed the

Tenants applied the security deposit of \$675.00 toward payment of the last months' rent.

RM submitted into evidence a copy of the 2 Month that stated the effective for move-out was October 31, 2021. RM stated the Tenants vacated the rental unit and dropped off the keys to the Landlord on October 31, 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. The Landlord initially stated the Landlord had renovations performed on the rental unit and she moved into the rental unit on April 15, 2022. The Landlord stated that, although she did not view the rental unit prior to its purchase, she viewed pictures of it that were taken by the appraiser.

The Landlord stated the rental unit required renovations due to health and safety considerations. The Landlord stated that, starting around Remembrance Day 2021, her husband ("SU") began occupying and sleeping at the rental unit during the week while the renovations were being performed and he would return to their living accommodations on weekends.

SS testified she is the Landlord's sister. SS stated she recalls the Landlord's husband moving into the rental unit around November 11, 2021 as she it was around Remembrance Day and her brother's birthday. SS stated SU would stay at the rental unit during the week and leave on weekends. SS stated that, due to vandalism in the area, she would check on the rental unit on weekends. SS stated SU would supervise the workers performing the renovations and do general cleanup in the rental unit. SS stated that, although the kitchen was being renovated, the bedrooms were okay to use and that SU slept in one of the bedrooms.

RM stated that, when Cindy took over the house in May 2021, the Landlord gave mixed messages about whether she would use the rental unit for the Landlord's family or sell it. RM stated the Landlord also considered letting the Tenants stay in the rental unit if they were willing to pay more rent as the current rent was below comparable rents in the same geographic area. RM stated that, although the Landlord acquired the rental unit on May 1, 2021, they did not know who the Landlord was until May 4, 2021.

RM submitted into evidence an annotated timeline ("Chronology") of the interactions between the Tenants and the Landlord. The Chronology stated Landlord called on May 4, 2021 and left a voicemail message that she was going to sell the rental unit. The Landlord denied she left a message for the Tenants on May 4, 2021 to tell them she was selling the rental unit. The Chronology stated the Landlord called on May 7, 2021

and told the Tenants they could purchase the house over a 12-month period. The Landlord stated she did offer the Tenants the opportunity to purchase the rental unit because the Tenants told the previous owner they were interested in purchasing it from him. SS stated she told the Tenants they could purchase the rental unit for \$1,200,000.00.

The Chronology stated the Landlord called the Tenants on May 17, 2021 and told them she wanted \$2,300.00 per month for rent. The Landlord stated it was the Tenants who offered to pay \$2,300.00 per month in order to stay in the rental unit for a longer period of time. The Landlord stated she received an email from RM but the Landlord admitted she did not serve the Tenants with a Notice of Rent Increase. The Landlord did not submit a copy of the email from RM. However, the Tenants did not dispute this testimony of the Landlord.

RM stated that on May 18, 2021 the Landlord came to the rental unit with a friend and served the Tenants with a Two Month Notice for Landlord's Own Use ("Earlier Notice") that stated the rental unit would be used by the Landlord's daughter. RM stated she was scared of being evicted if the Tenants did not pay the increased rent. RM stated the Landlord took the Earlier Notice back when the Tenants agreed to pay \$2,300.00 per month for rent.

RM stated the Landlord served another Two Month Notice for Landlord's Own Use dated July 13, 2021 ("Subsequent Notice") that was delivered by registered mail to the wrong address. At my request, RM uploaded a copy of the Subsequent Notice and it was submitted into evidence for the hearing. RM stated the July 13, 2021 Notice was ultimately received by the Tenants as a neighbour, who knew RM's name, gave it to RM. RM testified the Subsequent Notice stated the reason for ending the tenancy was for the use of the landlord or the landlord's spouse.

RM stated that it was the Tenants' position that the Landlord was attempting to use the threat of serving a Two Month Notice on them as a means of getting the Tenants to enter into a new tenancy agreement with higher rent than the Tenants were currently paying. RM stated the Landlord agreed to let the Tenants stay in the rental unit, after the Landlord purchased the rental unit from the previous landlord, on the basis the Tenants would pay increased rent. RM testified that he affirmed all of the evidence provided by RM at the hearing.

RM cross-examined the Landlord and asked why the Landlord's husband would stay at the rental unit as opposed to returning to the Landlord's residence in the evening when

they were only located about 1 ½ kilometers from the rental unit. The landlord stated her husband stayed at the rental unit at night because they did not want to leave the rental empty. The Landlord stated the rental unit looked old and her husband stayed there to prevent vandalism. RM stated the Tenants were unaware the Landlord's husband started occupying the rental unit shortly after the Tenants vacated the rental unit while renovations were being performed on it.

The Landlord stated the previous landlord informed the Tenants in writing that the tenancy agreement between the previous landlord and the Tenants would end on April 30, 2021, being the day prior the date of the purchase and sale of the rental unit to the Landlord.

### 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 Landlord, the Tenants and SS to be credible and forthcoming.

The Tenants seek \$13,800.00 compensation pursuant to section 51(2) of the Act on the basis the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice. The Tenants stated they were getting mixed messages from the Landlord on whether she was going to sell the rental unit, use it for her family or let the Tenants remain in the rental unit if they entered into a new tenancy agreement at more rent than they were currently paying. RM stated the Tenants agreed to pay more rent as they were afraid they would be evicted. RM stated the Landlord came to the rental unit on May 18, 2021 with the Earlier Notice and took it back when the Tenants agreed to pay \$2,300 per month for rent. RM stated the Landlord sent the Subsequent Notice by registered mail to the wrong address. Even though the Tenants ultimately received the Subsequent Notice, the Landlord appears to have accepted that it was not served in accordance with the provisions of section 88 and was ineffective.

The 2 Day Notice was served by the Landlord on the Tenants in accordance with the provisions of the Act and the parties agreed the Tenants vacated the rental unit on September 30, 2021.

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 Landlord, or her husband, 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 September 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 Landlord was 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 Landlord stated her husband commenced living in the rental unit during weekdays commencing around Remembrance Day of 2021 because of the potential for vandalism to the rental unit. SS testified the Landlord's husband occupied the rental unit during weekday and went to the Landlord's home on the weekend. SS stated she checked on the rental unit on weekends. RM admitted the Tenants did not know the Landlord's husband was occupying the rental unit on weekdays while the renovations were being performed on the rental unit.

I find the Landlord's husband commenced occupying the rental unit commencing November 11, 2021, being a reasonable period of time after the effective date of the 2 Month Notice. I find the Landlord and her husband have occupied the rental unit for more than a six-month period after November 11, 2021. As such, I find the Landlord and her husband, either alone or together, have 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 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. Based on the foregoing, I find the Landlord is 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

I note that, contrary to the testimony given by the Landlord, the tenancy agreement between the Tenants and the predecessor landlord did not end when the Landlord purchased the rental unit. The Tenants lease was an interest in land and that interest ran with the land from the predecessor owner to the Landlord until the tenancy ended on September 30, 2021. RM stated the Tenants agreed to pay more rent to the Landlord in order to avoid being evicted from the rental unit. The Tenants did not specify if they actually paid additional rent to the Landlord prior to the tenancy ending pursuant to the 2 Month Notice. *Residential Tenancy Policy Guideline 37* (PG 37”) provides guidance on when a landlord may impose a rent increase. PG 37 states in part:

1. Permitted Rent Increases

Under section 36 of the Manufactured Home Park Tenancy Act (MHPTA) and section 43 of the Residential Tenancy Act (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (“annual rent increase”)
- *agreed to by the tenant in writing (“agreed rent increase”)*
- ordered by the director on an application in the circumstances prescribed in the regulations (“additional rent increase”)

[...]

2. Notice Requirement

*The landlord must give the tenant a completed Notice of Rent Increase form at least three months before the effective date of the rent increase. This applies to annual rent increases, agreed rent increases and additional rent increases. The approved form must be used.*

If a landlord does not obtain the written consent of the tenant or enter into a new tenancy agreement and/or did not serve the tenant with a Notice of Rent Increase at least 3 months before the effective date of the rent increase, then the landlord has not complied with the provisions of the Act respecting rent increases. In the event a landlord has not complied with the requirements for a rent increase, then a tenant has

the option of making an application for dispute resolution to seek an order for the return of any excess rent paid to the landlord as a result of the non-complaint rent increase. An application for dispute resolution to make a claim under the Act for a breach of the Act, the *Residential Tenancy Regulations* and/or tenancy agreement must be made within 2 years of the date the tenancy end.

### 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 1, 2022

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Residential Tenancy Branch