



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETCT, FFT

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for compensation pursuant to s. 51(2) equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- Return of their filing fee pursuant to s. 72.

A.A. appeared as the Tenant. Y.L. appeared as the Landlord and was represented by counsel, C.S..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issues to be Decided

- 1) Are the Tenants entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?

2) Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on December 1, 2020.
- The Landlord obtained vacant possession of the rental unit on December 1, 2021.
- Rent of \$4,000.00 was payable on the first day of each month.
- A security deposit of \$2,000.00 was paid by the Tenants to the Landlord.

A copy of the tenancy agreement was put into evidence by the parties.

Landlord's counsel advised that the Tenant was served with a Two-Month Notice to End Tenancy (the "Two-Month Notice") on the basis that the Landlord was to occupy the rental unit. A copy of the Two-Month Notice was put into evidence by the parties, which indicates its effective date was November 30, 2021.

Landlord's counsel advised that the Tenants vacated the rental unit, that the security deposit was returned, and that the Tenants were compensated for one month's rent for which they were entitled to under s. 51(1) of the *Act*.

Landlord's counsel indicates that the Landlord moved into the rental unit on January 29, 2022. As evidence of the move, the Landlord has provided a receipt from a moving company dated January 29, 2022. The Landlord's evidence includes various invoices showing the Landlord's name at the rental unit address, which is held as proof that the Landlord resides within the rental unit. Landlord's counsel also advised that the home insurance policy was updated to reflect the Landlord was occupying the rental unit, with the Landlord's evidence showing that the amendment was effective on January 27, 2022.

Landlord's counsel says that the Landlord had intended to move into the rental unit in December 2021 but waited until January 2022 due to the holiday season and the poor weather. Landlord's counsel says that the rental unit needed landscaping. The

Landlord's evidence includes a landscaping receipt dated December 17, 2021 for garden work and cleaning.

The Tenant indicates that the present application was filed after he discovered that the rental unit had been advertised for rent. Copies of the advertisement were put into evidence.

Landlord's counsel advised that the Landlord owns multiple properties and that she retained a property manager, E.L., who had assisted the Landlord in managing her properties. Landlord's counsel acknowledges that the rental unit had been advertised for rent, though says that the property manager did so without the Landlord's authorization. Landlord's counsel argued that the property manager was driven by a desire for commissions and acted negligently. I was advised that the Landlord learnt of the advertisement on January 26, 2022 and immediately requested that the advertisement be removed.

The Landlord's evidence includes the following reproduction and translation of correspondence between the Landlord and the property manager on January 26, 2022:

2022.01.26 3:08PM (E.L.)

(Text) The house hasn't been rented out. This shouldn't be a reason for him [previous tenant] to sue you. I suggest we remove the advertisements.

2022.01.26 3:20PM (Landlord)

(Text) Remove the ad immediately! I never agreed to posting the property for renting out in the first place.

The Landlord's evidence includes a "Termination Agreement" dated March 18, 2022 signed by the Landlord. Landlord's counsel says that the Landlord terminated her relationship with the property manager partly due to the property manager posting the advertisement for rental unit.

Landlord's counsel emphasized that it had always been the Landlord's intention to occupy the rental unit and that she does, in fact, occupy the rental unit. It was explained that the Landlord intended to occupy the rental unit out of her various properties so that she could designate it as her principal residence for tax purposes with the intention of potentially selling the property afterwards.

The Landlord's evidence includes a transcribed translation of a messages between her and the property manager dated September 29, 2021, which is reproduced below:

2021.09.29 9:53AM (E.L.)

(Audio) (Y.L.), I have sent the notice to the Tenant at [the rental unit address] asking him to move out by the end of November. The Tenant has agreed, and he hopes to find a suitable alternative rental near the area. He is fairly agreeable and a good person.

2021.09.29 8:26PM (Landlord)

(Audio) The Tenant is a good person. If he wants, he could rent my condo instead. Otherwise, everything is okay. This Saturday I've booked someone to install the window and the door on the second floor.

2021.09.29 9:16PM (E.L.)

(Audio) I believe the Tenant is looking for a new place in [municipality]. [...]

2021.09.29 9:22PM (Landlord)

(Audio) If he hasn't found a place yet, we can push it back by a month. It's hard to find a around Christmas time. We can push back the move-out date by 1 month. If he can find a place then no worries. I need to organize my condo. I need to organize and get the house ready prior to moving in. I need to also clean up the condo before we rent it out. I will be moving into the house property as my principal residence so it wouldn't be taxable. I'm planning to move and live there for at least 1 year, and then maybe after that consider selling it.

I have removed identifying information from the Landlord's evidence in the interest of the parties' privacy. Neither party indicated that the effective date of the Two-Month Notice was altered or otherwise changed.

The Tenant does not deny that the Landlord currently occupies the rental unit, though argued that this occurred after the Landlord became aware of the present application. The Tenant indicates that his application was served via registered mail and that it was received on January 26, 2022.

Landlord's counsel argued that it was not possible for the Landlord to find a moving company within the range of time between receiving notice of the present application and when she moved in on January 29, 2022. It was further argued that whether the

Landlord had notice of the present application is not relevant because the determinations under s. 51(2) are a factual determination on whether the Landlord occupies the rental unit. Landlord's counsel emphasized that the Landlord does occupy the rental unit.

### Analysis

The Tenant seek compensation under s. 51(2) of the *Act* after being served with the Two-Month Notice.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The wording of s. 51(2) clearly sets the evidentiary burden on the Landlord to prove that she moved into the rental unit within a reasonable period after the effective date of the Two-Month Notice and has been living within the rental unit for at least 6 months.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act*. It states the following with respect to what is considered a reasonable period:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

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.

Section 51(2) is clear that the stated purpose must be fulfilled within a reasonable time after the effective date set out in the notice. Policy Guideline #50 provides guidance that a "reasonable period" is context specific, though suggests that a reasonable period for simple occupation of the rental unit by a landlord or their family member is 15 days.

The Landlord indicates in her evidence that she began to occupy the rental unit on January 29, 2022. The effective date set out in Two-Month Notice is listed as November 30, 2021. There is no evidence to suggest that the effective date of the Two-Month Notice was changed or altered by the parties. The Tenants vacated as per the date set out in the Two-Month Notice.

In other words, the Landlord took slightly less than 2 months to occupy the rental unit. The Landlord indicates that the rental unit required landscaping and that she did not wish to move in December 2021 due to the weather and the holidays. Neither of these rationales are sufficient, in my view, for the Landlord taking nearly 2 months to occupy the rental unit.

It is unclear why landscaping, which is outside the rental unit to be occupied, would prevent or explain why the Landlord could not occupy the rental unit in December 2021. Further, the receipt provided the Landlord describes the work undertaken on December 17, 2021 as garden work and cleanup. It does not appear to have been of an extensive nature at all. Whether the rental unit required landscaping is not relevant to explaining why the rental unit could not be occupied by the Landlord.

I place no weight in the Landlord's argument that she did not wish to move in December 2021 due to the weather and the holidays. She issued the Two-Month Notice. She set the effective date of the Two-Month Notice. It was entirely within her power to set another effective date. She chose to make the Two-Month Notice effective on November 30, 2021. In other words, her needing to move into the rental unit within a reasonable period of November 30, 2021 is entirely self-imposed.

The Landlord admits that she took nearly 2 months to occupy the rental unit, which is nearly one-third of the time she is required to occupy the rental unit under s. 51(2). I do not accept that 2 months constitutes a reasonable period under the circumstances. I find that the Landlord failed to occupy the rental unit within a reasonable period after the effective date set in the notice.

As the Landlord failed to occupy the rental unit within a reasonable period of the effective date of the Two-Month Notice, I find that the Tenants are entitled to compensation under s. 51(2) of the *Act*, which in these circumstances is \$48,000.00 (\$4,000.00 x 12).

I note this order exceeds the small claims limit of \$35,000.00. Policy Guideline #27 provides guidance with respect to the Residential Tenancy Branch's jurisdiction. It is clear from Policy Guideline #27 at page 3 that the Director may accept jurisdiction on claims under s. 51(2) of the *Act* which exceed the small claims limit. The fact that the order exceeds the small claims limit under the present circumstances is not relevant and I may grant an order that exceeds \$35,000.00.

### Conclusion

Pursuant to s. 51(2) of the *Act*, the Tenants are entitled to compensation of \$48,000.00.

The Tenants were successful in their application. I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants' \$100.00 filing fee.

Pursuant to ss. 51 and 72 of the *Act*, I order that the Landlord pay **\$48,100.00** to the Tenants.

It is the Tenants' obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenants with the Supreme Court of British Columbia 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: August 17, 2022

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Residential Tenancy Branch