



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant AR (the tenant) and landlord SV (the landlord) attended the hearing. The tenant represented tenant AA. The landlord represented landlord ZF and Driftwood Developments Ltd., Inc. N. BC0428867. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

The tenant affirmed the tenancy started on June 21, 2017 and ended on April 01, 2021. Monthly rent when the tenancy ended was \$2,600.00, due on the first day of the month. The landlord collected and returned a security and a pet damage deposit.

The tenant stated she received an email on March 07, 2021 asking her to move out because the rental unit was sold. The tenant signed a mutual agreement to end the tenancy.

The tenant testified she did not receive a two month notice to end tenancy.

The landlord said that a two month notice to end tenancy was not served.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed:

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The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 51(2) of the Act states:

**(1)A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property]** is entitled to receive from the landlord on or before the effective date

of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[...]

(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 the landlord or purchaser, as applicable, 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.

(emphasis added)

Per Rule of Procedure 6.6 and section 51(2) of the Act, the tenant has the onus to prove the landlord served a 2 month notice to end tenancy under section 49 of the Act and the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 49 of the Act states:

(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

(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.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

- (b)give the address of the rental unit,
- (c)state the effective date of the notice,
- (d)except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e)when given by a landlord, be in the approved form.

I accept the undisputed testimony that a two month notice to end tenancy (namely form RTB 32) was not served.

As the landlord did not serve a 2 month notice to end tenancy for landlord's use of the property under section 49 of the Act, I find the landlord does not have to pay the compensation under section 51(2) of the Act. Thus, the tenants are not entitled to the compensation they are seeking.

In a recent decision of the B.C. Supreme Court (*Keys v. Geary*, 2021 BCSC), Justice Power wrote:

[63] Turning to my analysis, I find that the arbitrator's decision to award compensation to the Tenant under s. 51 of the RTA, based on her finding that the handwritten note was a notice under s. 49, was patently unreasonable. In my view, the arbitrator failed to consider the mandatory language in s. 49(7) which explicitly requires that a notice under that section comply with s. 52. As can be seen, s. 52 provides that in order for a notice to be effective, it must, among other criteria, state the effective date of the notice and, when given by the landlord, be in the approved form.

Pursuant to section 72 of the Act, as the tenants were not successful with their application, they must bear the cost of the filing fee.

### Conclusion

I dismiss the tenants' application 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 26, 2022