



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

On June 10, 2021, the Tenant made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”).

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for December 9, 2021. The original hearing was adjourned as per my Interim Decision dated December 10, 2021, and then subsequently adjourned again as per an Interim Decision dated April 7, 2022. The final, reconvened hearing was set down for July 19, 2022 at 11:00 AM.

The Tenant attended the final, reconvened hearing, with A.S. attending as counsel for the Tenant. The Landlord attended the final, reconvened hearing as well, with M.M. attending as counsel for the Landlord. M.W. and G.W. also attended as witnesses for the Landlord. S.W. attended as an observer and did not make any submissions.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of A.S., M.M., and S.W., provided a solemn affirmation.

As per the Interim Decision dated December 10, 2021, service of documents was confirmed and accepted. As such, I have accepted the parties' evidence and will consider it when rendering this Decision.

In the Interim Decision dated April 7, 2022, the Landlords' counsel was permitted to submit additional evidence for consideration, and M.M. advised that this was served to the Tenant's counsel. A.S. confirmed that this was received pursuant to the instructions in the Interim Decision; however, she took issue with some statements of fact in the evidence that contradicted the Landlords' testimony provided in earlier hearings. Given that this evidence was served in accordance with the Interim Decision, I have accepted this and will consider it when rendering this Decision.

During the final, reconvened hearing, the parties agreed that M.W. be added as a Respondent to this Application. M.W. provided her legal name, and this was added to Style of Cause on the first page of this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2015, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 30, 2021, after receiving the Notice. Rent was established at \$5,200.00 per month and was due

on the first day of each month. A security deposit of \$2,600.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

A.C. advised that he gave the Tenant verbal notice to vacate the rental unit five months prior to the end of June 2021. However, all parties agreed that the Tenant was served the Notice on or around May 3, 2021, by email. The Notice was served because "The rental unit will be occupied by the landlord of landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, more specifically, the Landlords indicated that the family member that would occupy the rental unit would be "The father or mother of the landlord or landlord's spouse." The effective end date of the tenancy was noted on the Notice as August 31, 2021.

M.M. made submissions and indicated that M.W. purchased the rental unit with the intention of her son to live with her; however, he passed away unexpectedly on April 9, 2020. M.W. wanted to fulfill her dream of moving into the rental unit and set up a room as a memorial to her son. She discussed this with G.W., who agreed to move in with her, and then M.W. informed A.C. about this on February 28, 2021. A.C. then informed the Tenant of this verbally that same day.

She submitted that the Tenant emailed A.C. on February 20, 2021 regarding extending the tenancy, and a rent increase was discussed, but not agreed to by the Tenant. As such, no increase in rent was implemented. She advised that the Tenant contacted A.C. in April 2021 offering to pay more rent to extend the tenancy; however, this was declined because of M.W.'s desire to move in.

She noted that M.W. has suffered from chronic low back pain for many years, and given the size of the rental unit, with multiple levels, M.W. would require someone to live with her. She referenced the medical documentation of March 9, 2021, which indicated that M.W.'s condition improved over the last two months. However, this flared up in April 2021, and M.W. fell in May 2021, resulting in an MRI on May 8, 2021, which indicated a degenerative back condition.

In addition, she noted that G.W. discovered that her role at work would be changing in October 2021, which would have resulted in reduced pay. After G.W. reviewed her finances and her own housing situation, she determined it would not be feasible to move into the rental unit with M.W. They attempted to find another member of the family to move in with M.W., but none was found.

She submitted that A.C. attempted to contact the Tenant in mid-May 2021 regarding the change in M.W.'s plan, and attempted to withdraw the Notice, but received no response. After an email on May 19, 2021 was sent to the Tenant stating that "Circumstances have changed with mom and she had decided not to move into the [Property] at this time.", the Tenant provided her written notice to end the tenancy effective for June 30, 2021. A.C. then advertised the rental unit for rent on June 10, 2021.

It is the Landlords' position that M.W.'s aggravated health concerns and the inability of G.W., or any other family member, to live with M.W. were extenuating circumstances that prevented M.W. from moving into the rental unit for at least six months after the effective date of the Notice.

A.C. advised that M.W. lived in a ground floor, one level, two-bedroom apartment for the last two years, and she purchased the rental unit for her son; however, he passed away in or around April 2020. He stated that she decided in or around February 2021 that she would move into the rental unit, so verbal notice was given to the Tenant. Around this time, a rent increase was discussed, but was never implemented. He submitted that M.W. believed that she could still live in the rental unit, as she was agile, and that maybe G.W. could live with her, but that did not work out. She discovered in March 2021 that her health conditions were chronic and deteriorating due to a fall. He stated that M.W. "maybe" advised him "around May or so" that she would not be able to move into the rental unit due to her back condition. He believed he emailed the Tenant on May 19, 2021 in an attempt to withdraw the Notice. He stated that he advertised to re-rent the unit in June 2021, and was able to re-rent it for July 10, 2021.

M.M. posed questions to M.W., and M.W. advised that her son loved the rental unit and they wanted to move into it in 2020; however, she decided to move in in February 2021 and set up a room as a tribute to him. She testified that she could not live there safely by herself, due to her back issues, and that there were too many stairs. She stated that the rental unit is four floors in total and that the bedroom is on the second floor. She submitted that G.W. was supposed to live with her, but something happened. She stated that she had a bad fall in May 2021, and the pain was such that she could not sit for too long or go up stairs. She stated that the pain was "really bad" every morning, that she must do exercises, and that she cannot move safely.

A.S. then posed questions to M.W., and M.W. confirmed that she has suffered from chronic pain for 18-20 years and that this has caused her difficulty the entire time. As well, M.W. stated that she stepped off the curb and fell on April 21, 2021. However, she

then corrected that submission to May 2021, and then she stated that she could not remember when it happened.

M.M. posed questions to G.W., and G.W. advised that the death of M.W.'s son was devastating and due to M.W.'s religious beliefs, it was her intention to set up a shrine in the rental unit for her son. She testified that there was talk from M.W. about asking her to move in; however, it was after the Notice was served that M.W. asked G.W. to sort out her financial situation. She stated that, at that time, she was unsure whether her financial situation would allow her to move in with M.W. Given some consideration of her personal and employment situation, G.W. determined that it would not be feasible financially to move in. She stated that M.W. has had chronic back pain for awhile, that she has flareups, that it became progressively worse in March 2021, and that she had a fall in mid-May 2021. She testified that M.W. suffers from chronic, shooting pain, that she has numbness in her feet and is unsteady, that she has never lived alone and is not independent, that she cannot live on her own in the rental unit, that these circumstances could not have been foreseen, and that the Landlord made good faith attempts to move into the rental unit.

A.S. then posed questions to G.W., and G.W. advised that the good faith efforts that A.C. or M.W. made to move into the rental unit were the fact that G.W. and another member of the family were asked to move in. She testified that M.W. discussed the amount of rent with G.W. in early May 2021, so she was aware of the financial commitment that was required to move in. However, she informed M.W. that she could not move in after M.W. told her that the Notice was served. As well, she stated that her financial circumstances due to work happened in or around October 2020, and while she wanted to move in, she could not afford to. Finally, she stated that M.W. had been living alone since January 2020 and lives alone now.

A.S. advised that the Landlords cannot simply withdraw the Notice unilaterally; therefore, the Notice was not withdrawn and was still a live Notice. She submitted that there were a series of emails from February 20, 2021 onwards where A.C. suggested a rent increase of \$300.00 per month, despite the rent moratorium, to extend the tenancy and that it was unlikely that M.W. would move into the rental unit anytime soon, so there would be no other rent increases for the next two years. Then, on February 28, 2021, A.C. emailed stating that M.W. and G.W. would be moving in. He called her later to tell her that this would be effective after August 31, 2021.

The Tenant advised that A.C. stated on the phone call in March 2021 that M.W. would be moving in, so the tenancy could not be extended. As such, she started looking to a new place to live. Given that she herself experienced some health issues, she asked A.C. in April 2021 if she could stay longer and pay a minimal rent increase; however, he did not agree to this. She stated that she was not served the Notice until she specifically asked A.C. for this, and that she finally received it on May 3, 2021.

A.S. advised that the Tenant requested a reference letter from A.C. on May 4, 2021, and that the Tenant's new landlord contacted A.C. for a reference in mid-May 2021. She stated that the Tenant signed a new tenancy agreement on May 17, 2021, and that A.C. contacted the Tenant about an empty homes tax audit. After the Tenant informed A.C. that she was close with the neighbours, A.C. then emailed on or around May 19, 2021 stating that M.W. "decided" not to move in. She submitted that "deciding" is not an extenuating circumstance, and that there were two important issues to note. First, A.C. had asked for an illegal rent increase. Secondly, after being contacted for a reference, and after realizing that the Tenant was close to the neighbours, A.C. then attempted to withdraw the Notice, which she believes is more than mere coincidence. She stated that the Tenant gave her notice to end the tenancy on May 30, 2021, that A.C. had listed the rental unit days later as available on June 9, 2021 for \$6,000.00 per month, and that he showed the rental unit starting June 13, 2021.

The Tenant testified that at the move-out inspection on June 30, 2021, A.C. was there with potential renters, and he boasted about how easy it was to re-rent the unit. As well, he called a few days later for an unrelated matter and stated that people were "begging" to rent the unit.

A.S. referenced the substantial medical evidence that was submitted and noted that M.W.'s condition was "aggravated" on April 21, 2021. She emphasized that A.C. had previously testified that he would not serve the Notice until M.W. and G.W. were "certain" that they would move in. She noted that on March 9, 2021, M.W.'s medical evidence indicated that she suffered from "ongoing chronic low back pain", that she suffered from a fall on April 21, 2021, but that her "back pain [was] much better since then", and that on July 6, 2021, it was noted that her "low back pain [was] improving. Feeling pretty good right now". Furthermore, in the medical report in October 2021, which was within six months of the effective date of the Notice, it indicated that M.W. felt "no limitation in her activity", that "she does regular exercise", and that "she can walk up stairs with the limitation being in terms of her breathing." As such, this is entirely

contradictory to M.W.'s claims of ill health being an extenuating circumstance preventing her from moving into the rental unit.

Moreover, she indicated that G.W. testified that her financial circumstances and pay cut occurred in October 2020, so this could not be an extenuating circumstance either. She stated that clearly A.C. acted in bad faith when serving the Notice as he could not get the rent increase that he wanted, and when he realized that he may have been caught after serving the Notice, he attempted to withdraw it. The motivation of ending the tenancy for more money was evident when he bragged about how easy it was to rent the unit for \$6,000.00 per month.

M.M. posed questions to the Tenant and the Tenant confirmed that A.C. always reminded her that he never increased the rent, that she signed the new tenancy agreement with her new landlord on or around May 16, 2021, and that she did not return A.C.'s calls until she signed this new tenancy agreement as she believed that there was no point because A.C. had already served the Notice.

M.M. and A.S. made closing submissions and referred to relevant evidence to support their positions.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy when the rental unit will be occupied by the Landlords or the Landlords' close family member.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice. Furthermore, and as noted in Policy Guideline 11, "A landlord or tenant cannot unilaterally withdraw a notice to end tenancy."

The next issue I must consider is the Tenant's claim for twelve-months' compensation owed to her as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated May 3, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

At the time the Notice was served, the Landlords advised that the intention was for M.W. to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after she gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlords, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

As well, Policy Guideline # 50 states the following:

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 for 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 to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. 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.”

When reviewing the undisputed evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlords or close family member only. As the Landlords acknowledged that the rental unit was not occupied for the stated purpose for at least six months after the effective date of the Notice, I am

satisfied that the Landlords have failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

Regarding any references to past Decisions of the Residential Tenancy Branch that may have been cited as relevant, I acknowledge that I am aware of past Decisions. However, these are instructive, not determinative, and I am not bound or obligated to follow past Decisions of the Residential Tenancy Branch.

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I may need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In considering the Landlords' submissions, I acknowledge that it was M.W.'s alleged plan to move into the rental unit as a tribute to her son; however, I am sceptical that her ailing health would be considered an extenuating circumstance for not moving in. First of all, I note that the accommodation that she was apparently already living in appeared to be far more suitable for her if she had mobility issues. I do not find it reasonable that someone with health and/or mobility concerns would consider moving into a four-floor house, despite M.W.'s statement that this was to be a tribute to her son. More importantly, while it appeared as if M.W. did have some health concerns, I note that much of her medical evidence points to improvements in her condition, and an ability to move without limitation.

When reviewing the totality of the evidence before me, given that M.W. allegedly suffered from "chronic" and ongoing back pain in the past, I am unconvinced of her purported consideration of moving into such a large home with so many stairs. I do not find that her alleged worsening of condition, even if it was exacerbated by a fall, would be considered an unanticipated or unforeseen event. Moreover, given the contradictory evidence presented, I am doubtful of the severity of M.W.'s physical condition. I find that the above doubts and inconsistencies in the Landlords' evidence and testimony cause me to question the reliability of those submissions, and the credibility of the Landlords on the whole. I am satisfied that these submissions were likely crafted after receipt of the Notice of Hearing package in an attempt to portray a scenario that did not exist. Ultimately, I do not accept that this was an extenuating circumstance that prevented the Landlords from occupying the rental unit and residing there for at least six months after the effective date of the Notice.

With respect to the other extenuating circumstance of G.W.'s financial situation that prevented her from moving in with M.W., I find it important to note that G.W. testified that M.W. asked her to move in after the Notice was served and that it was then that G.W. fully assessed her own financial situation, despite already knowing in October 2020 of a change in salary with respect to her work position. Consequently, I am not satisfied that this would be considered an unanticipated, unforeseen, or extenuating circumstance.

Ultimately, I do not accept that there were any extenuating circumstances that prevented the Landlords from occupying the rental unit and residing there for at least six months after the effective date of the Notice. As such, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$62,400.00**.

### Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$62,400.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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