



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenants filed on December 17, 2021 for:

- compensation for monetary loss or other money owed; and
- the filing fee.

The hearing was attended by one of the tenants and by the purchasers. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The purchasers confirmed they received the tenants' application materials, and that they had not served or submitted any responsive evidence.

### Issues to be Decided

- 1) Are tenants entitled to compensation for monetary loss or other money owed?
- 2) Are the tenants entitled to the filing fee?

### Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began 15 years ago and ended January 1, 2021 as a result of a 2 Month Notice for Landlord's Use of Property. At the end of the tenancy the rent was \$800.00, due on the first of the month.

The tenant testified that they did not have a written tenancy agreement with their landlord, who was their friend. The tenants lived in the basement unit and provided support to their landlord's aging parents who lived upstairs.

The tenant testified that when their landlord died, the family put the property up for sale and the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) as the purchasers would be moving in. A copy of the Two Month Notice is not submitted as evidence. The tenant submitted a copy of the Buyers Notice to Seller for Vacant Possession, dated October 26, 2021 and signed by the purchasers. It states:

The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

The tenant testified that no one moved into the rental unit after they left and the whole property was torn down about 10 months after they moved out. The tenants testified to the major disruption the end of the tenancy had on their lives and the additional rent expenses they incurred as a result. The tenants are seeking \$22,290.99 to compensate for their rent, moving, junk removal, and transportation costs.

The purchasers provided no documentary evidence in response to the tenants' application. They testified that after their offer to buy the property was accepted, they provided the buyer's notice for vacant possession. The purchasers testified that the tenants did not dispute the Two Month Notice, and that the realtor said the tenants did not object to moving.

The purchasers testified that their intention was for the purchasers' elderly parents to move into the property the week of January 7, 2021. The purchasers testified they took time off from work to pack up the belongings their parents had accumulated over 40 years in their home.

The purchasers testified that the pandemic then presented circumstances that were out of the purchasers' control. The purchasers testified regarding the impact of the province-wide restrictions, including the need to isolate and reduce contact. The purchasers testified they are both frontline healthcare workers, and due to the pandemic they could not be in physical contact with their parents. The purchasers testified that as a result, the move was put on hold.

The purchasers testified they also used the dispute address as a “backup home,” in case either of them needed to isolate. The purchasers testified they did not rent out the property.

The purchasers testified that when they were able to see their parents in July 2021, the family re-evaluated, and with the stress of isolation and the financial pressures of maintaining three properties, they decided to downsize into one home for their extended family. They decided to demolish the home and build a new home on the site. The purchasers testified the subject property was demolished in November 2021.

### Analysis

Based on the affirmed undisputed testimony of the parties, I find that the tenancy ended on January 1, 2021, following the issue of a Two Month Notice to End Tenancy, pursuant to section 49(5) of the Act. Although there is no documentary proof of the amount of rent the tenants were paying at the end of the tenancy, the tenant’s testimony was credible and I find that the rent was \$800.00 per month.

Policy Guideline 16 *Compensation for Damage or Loss* states that the claimant must prove the existence of damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party.

I find that in the case of not meeting the purpose for ending a tenancy under 49(5), the Act gives the value of compensation under section 51, namely 12 times the monthly rent. I will not be applying Policy Guideline 16 to consider the tenants’ expenses related to vacating the unit and will instead refer to Policy Guideline 50 *Compensation for Ending a Tenancy*.

Section 51(2) of the Act requires a purchaser pay compensation to a tenant if the purchaser does not accomplish the purpose for which the tenancy was ended under section 49 within a reasonable period or has not used the rental unit for the stated purpose for at least six months.

The purchasers testified they intended for their parents to move into the rental unit on January 7, 2021 so that they could be closer to the rest of the family. They testified about preparations to move their parents but provided no dates. More than six months after the tenancy ended, in July 2021, they decided that their parents would not move in. I find that the purchasers did not accomplish the purpose for which the tenancy was ended within six months of the end of the tenancy.

The purchasers testified that they used the rental property as their back-up property to be used in case of a need for COVID-related isolation. Under the heading *Accomplishing the Purpose/Using the Rental Unit*, Policy Guideline 50 states that another purpose cannot be substituted for the purpose set out on the notice to end tenancy, even if this other purpose would also have provided a valid reason for ending the tenancy. I find that the purchaser's potential use of the rental unit as a place for COVID isolation does not accomplish the purpose of ending the tenancy, which was for the purchasers' parents to move in.

If I find the purchasers experienced extenuating circumstances that prevented them from moving their parents into the unit, I may excuse them from paying compensation to the tenants. Section E of Policy Guideline 50 notes that extenuating circumstances are those that could not be anticipated and are beyond the control of the purchaser. In section G, the Guideline gives the following example of what is probably not an extenuating circumstance: a landlord ends a tenancy to occupy the rental unit and then changes their mind.

A state of emergency throughout the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic. Thus the purchasers were already experiencing the state of emergency and COVID-related uncertainty in October 2020 when they purchased the rental unit and requested vacant possession.

As the purchasers were experiencing the state of emergency and COVID-related uncertainty at the time they purchased the rental unit and requested vacant possession, they can only rely on these as extenuating circumstances if they prove that after they asked for vacant possession in October 2020, there was a change in the state of emergency and COVID-related uncertainty and this change in circumstances prevented them from moving their parents into the basement rental unit.

While the purchasers testified to their need to reevaluate their plans due to the pandemic, they provided no evidence of what exactly occurred in the pandemic after they asked for vacant possession that specifically caused them to be unable to move their parents into the basement rental unit.

Therefore, pursuant to section 51(2) of the Act, I find the purchasers did not prove exceptional circumstances prevented them from moving their parents into the rental unit and they are required to pay the tenant an amount equivalent to 12 times the monthly rent payable under the tenancy agreement: \$9,600.00.

Pursuant to section 72, the tenant is entitled to recover the filing fee from the purchasers.

Conclusion

Pursuant to sections 51(2) and 72(1) I grant the tenants a monetary award in the amount of \$9,700.00.

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 22, 2022

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Residential Tenancy Branch