



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 12, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Application and documentary evidence packages. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51 and 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 1, 2018. The Landlord purchase the rental property on May 31, 2021. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,830.00 which was due to the Landlord on the first day of each month. The Tenants paid a security and pet damage deposit totalling \$700.00 which has since been returned to the Tenants. The tenancy ended on July 14, 2021.

The Tenants are seeking compensation equivalent to twelve times the amount of rent (\$1,830.00 x 12 = \$21,960) as they feel as though the Landlord has not accomplished the stated purpose of the Two Month Notice. The parties testified and agreed that the Landlord served the Tenants with the Two Month Notice dated June 3, 2021 with an effective vacancy date of August 31, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice was;

*"The Landlord and the Landlord's spouse intends to occupy the rental unit"*

The parties testified and agreed that the Tenants had provided the Landlord with a 10 day notice to end tenancy with an effective date of July 14, 2022 in compliance with the Two Month Notice.

The parties testified and agreed that they conducted a move out inspection of the rental unit on July 19, 2021. The parties testified and agreed that the Landlord requested that the Tenants sign a mutual agreement to end tenancy on July 19, 2021. The Landlord stated that this was meant to cancel the Two Month Notice. Furthermore, the Landlord stated that the Tenants were compensated an additional \$1,000.00 for signing the mutual agreement which stipulates that "no further interactions will take place between the parties". The mutual agreements is signed by both parties.

The Tenants stated that they signed the mutual agreement as it provided them with further compensation in the amount of \$1,000.00. The Tenants stated that this was meant to compensate them for miscommunications which occurred at the end of the tenancy. The Tenants stated that they made sure that by signing the mutual agreement, it would not invalidate the Two Month Notice.

The Tenants stated that their Mother resides next to the rental unit. As such, the Tenant's mother was able to keep an eye on the rental unit following the Tenants' departure. The Tenants stated that their Mother noticed that there was construction taking place in the rental unit and that no had moved into the rental unit until the beginning of January 2022. The Landlord acknowledged that a new Tenant moved into

the rental unit on January 12, 2022. The Landlord provided a copy of the new tenancy agreement in support.

The Tenants provided an advertisement from January 2022 offering the lower rental unit for rent. The Tenants stated that the advertisement refers to the upper rental as rented out separately. The Tenants provided a copy of the advertisement in support. During the hearing, the parties agreed that the lower unit had once been a one bedroom suite, however, in the advertisement, the Landlords were offering a 4 bedroom lower suite. The Tenants stated that this demonstrates that the Landlord completed significant renovations.

The Landlord stated that they performed cosmetic renovations while residing in the rental unit. The Landlord stated that they converted the living room and dining room into additional bedrooms to appeal to students. The Landlord stated that they accomplished the stated purpose of the Two Month Notice by residing in the rental unit during renovations. The Landlord stated that they re-rented the upper and lower rental units in January 2022 after the six months had elapsed.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations. (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, I find that the Mutual Agreement to End Tenancy which was signed after the end of the tenancy does not invalidate the Two Month Notice, or the responsibilities and compensation associated with the Two Month Notice under the Act. I find that the Landlord attempt to avoid the possibility of the Tenants seeking compensation relating to the Two Month Notice is an attempt to avoid the Act and I find it is of no effect.

According to Section 51(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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.**

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and

repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

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). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenants are claiming compensation in the amount of \$21,960.00 which represents twelve months of rent as the Landlord did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

I accept that the Tenants complied with the Two Month Notice and vacated the rental unit on July 14, 2021. During the hearing, the parties agreed that renovations took place at the rental unit, before the Landlord re-rented the rental unit as of January 12, 2022.

The Tenants stated that no one occupied the rental unit during renovations. The Landlord stated that she occupied the rental unit during renovations, before moving out to allow the new tenants to move into the rental unit on January 12, 2022.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that they occupied the rental unit during renovations. Furthermore, I find that the Tenants vacated the rental unit on July 14, 2021 and the Landlord's own testimony and evidence indicates that the new tenant moved into the rental unit on January 12, 2022, which is less than the six months after the effective date of the notice and end of tenancy. The Landlord did not provide any evidence to support that an extenuating circumstance prevented them from accomplishing the stated purpose of the Two Month Notice.

Based on the above I find that the Tenants are entitled to **\$21,960.00** in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenants were successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$22,060.00.

### Conclusion

The Landlord has provided insufficient evidence to demonstrate that they accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$22,060.00.

The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: September 21, 2022

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Residential Tenancy Branch