



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNETC, FFT**

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlords to reimburse the tenant for the filing fee pursuant to section 72.

The tenant S.D. attended with the lawyer R.T. on behalf of both tenants (“the tenant”). The landlord V.B. attended with the lawyer M.D. on behalf of both landlords (“the landlord”).

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The addresses to which the Decision would be sent were confirmed.

Both parties confirmed they were not recording the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the relief requested?

## Background and Evidence

Considerable evidence was submitted by both parties in a 90-minute hearing. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings based on submitted, relevant and admissible evidence are set out below.

The tenant claimed compensation of 12 times the rent for the unit they rented (for a total claim of \$20,314.80) as the landlord did not occupy the unit as required under the Act. Following the effective date of the Two Month Notice (June 30, 2021), the landlord did not occupy the unit for 6 months (until December 30, 2021) as required under the Act.

The landlord denied the tenant's claim. The landlord stated the unit was occupied by their child (the adult C.B.) in compliance with the Act and requested the application be dismissed.

## *Tenancy*

The parties agreed the tenancy began on October 1, 2016 and the tenant moved out on May 10, 2021. Rent was payable in the amount of \$1,692.00. The pet and security deposits paid by the tenant were returned at the end of the tenancy.

The parties agreed the landlord issued a Two Month Notice dated March 15, 2021 which was personally served on the tenant. The effective date of the Notice was June 30, 2021. The reason for the Notice was the unit would be occupied by the landlord's child. The Notice stated:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse.

Of the 3 possible selections in the Notice, the following was checked regarding the occupant:

The child of the landlord or landlord's spouse

A copy of the Notice was submitted which is in the standard RTB form.

The tenant provided notice they were moving out early and vacated on May 10, 2022. They received the one month's rent as compensation required under the Act.

### *The Tenant's Claims*

The tenant testified as follows.

They rented the downstairs apartment ("the unit") in a building owned by the landlord. The building also had an upstairs apartment ("the upstairs apartment"). Each was completely independent of the other. The only way to go between them was to go outside and access an exterior door of the other.

The landlord contacted the tenants on February 19, 2021, and said they wanted to sell the property. On March 10, 2021, the landlord sent a text message to the tenant stating they had a prospective buyer for the home who wished to increase the tenant's rent to "market rates". The landlord told the tenant that if the tenant would not agree to the rent increase, the potential buyer would occupy the entire building and evict the tenant.

On March 15, 2021, the landlord phoned the tenant and said that their two children, A.D.B. and C.B., would be moving into the unit on June 1, 2021. The Notice was issued March 15, 2021.

The tenant testified that one of the landlord's children, the adult A.D.B., lived in the unit after the tenant moved out. However, A.D.B. purchased a house and moved out in August 2021.

The tenant also testified that they drove by the building frequently for 6 months after they moved out and never saw a light in the unit. They believed the unit was not occupied.

The tenant testified that on November 17, 2021, a realtor posted a video describing the building and containing still images which show no furniture or personal possessions. The tenant believed this indicated the unit was empty at that time.

The parties agreed the landlord listed the building for sale on December 1, 2021. The unit was sold after January 1, 2022.

The tenant asserted the occupancy by the landlord's children from June 30, 2021 to December 30, 2021 was staged by the landlord to create a misleading impression that the unit was occupied between the time they moved out and the listing.

### *Landlord's Reply*

C.B., the landlord's son, provided testimony as follows. He and his sister, A.D.B. moved into the unit on May 24, 2021. A.D.B. moved out in August 2021. He occupied the unit for 6 months after the effective date of the Notice, moving out in January 2022. C.B. was called to provide affirmed testimony.

CB further testified that his long-time friend DM moved into the upstairs apartment. DM installed wifi which the unit did not have. After A.D.B. moved out, C.B. started spending more time in the upstairs apartment and sleeping there. However, he continued to use the unit uninterrupted as a home gym. He also used the kitchen daily for making meals. He used the bathroom and laundry room regularly. This continued until he moved out in January 2022.

The witness JD was called who testified as follows. He is a neighbour to the landlord. JD lives in a building next to the building in which the unit is located. His kitchen window is higher than the kitchen window of the unit and directly above. As a result, JD testified he can clearly see into the unit's kitchen. He frequently saw C.B. making meals and using the kitchen in the unit from the time C.B. moved in on May 24, 2021, until January 2022 when C.B. moved out.

C.B. acknowledged that the realtor's photographs show the unit as empty in November 2021. He testified the realtor staged the unit to appear empty while he was away for a week. The realtor moved his possessions for the photo shoot, so the unit appeared vacant. Afterwards, the realtor moved his possessions back into place and he resumed using the unit upon his return.

C.B. denied creating a false setting to misrepresent his occupancy of the unit.

### Analysis

#### *Section 49 – Reason for Ending a Tenancy*

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

The Two Month Notice was issued under s. 49(3), which reads:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Section 51(2) – Application by Tenant for Compensation*

The Act provides a tenant may apply for an order for compensation equivalent of 12 times the monthly rent under section 51(2) of the RTA. There are two grounds for such an application.

Section 51 (2) of the Act provides:

(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.

(Underlining added)

In this case, the tenant claimed that the landlord did not use the unit for the stated purpose (occupancy by the landlord's child) for at least 6 months (section 51(2)(b)).

RTB Policy Guideline 2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states that "vacant possession," including to "hold and keep for use," does not meet the definition of "occupy." To "occupy" is, per RTB Guideline 2A, to "occupy for a residential purpose."

In this case, landlord claimed the unit was not vacant, but was occupied by C.B..

*Burden of Proof*

*Policy Guideline 50 - Compensation for Ending a Tenancy* addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property.

The onus is on the landlord to prove the rental unit was used for the stated purpose for at least 6 months' duration.

The Guideline states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

*"Occupy the Rental Unit"*

The issue in this case turns on whether the landlord used the unit for the stated purpose (occupation by a child of the landlord) for at least 6 months' duration.

I have considered *Koyanagi v Lewis*, 2021 BCSC 2062. In that case, a landlord was held to be occupying a suite by using part of it as a home office:

[...] the Landlord is entitled to possession of the entirety of the basement suite even though it was only going to use a portion of it for the home office.

I have considered the testimony of the witnesses, the son C.B. and the neighbour J.D. Both provided believable testimony to which I give considerable weight.

Based on their testimony, I find C.B. moved into the unit as he testified, during May 2021 and occupied the unit for 6 months after the effective date of the notice, June 30, 2021. I accept his testimony that after his sister moved out in August 2021, he began to sleep in the upstairs apartment and continued to use the unit as he described. I accept that he used the unit's kitchen, bathroom and laundry regularly. I accept he kept a home gym in the unit. I find C.B. thereby "occupied" the unit as required under the Act.

I therefore conclude the rental unit was used for the stated purpose in the Two Month Notice (occupation by the landlord's child) for at least 6 months' duration after the effective date of the Notice.

Accordingly, I dismiss the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's 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: September 3, 2022

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Residential Tenancy Branch