



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenants: **MNETC, FFT**  
Landlord: **MNDCL, MNDL, FFL**

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and her mother, and both Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package served by Canada Post registered mail email on February 6, 2022, tracking number noted on cover sheet of decision, deemed served on February 11, 2022;
- the Tenants' evidence package personally served several months later, the Landlord confirmed receipt;
- the Landlord's Notice of Dispute Resolution Proceeding package served by Canada Post registered mail on August 5, 2022, tracking numbers noted on cover sheet of decision, deemed served on August 10, 2022;
- the Landlord's remaining evidence was served by Canada Post registered mail on August 6, 2022, tracking numbers noted on cover sheet of decision, deemed served on August 11, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matter

#### *Unrelated Claims*

I advised the parties 50 minutes into the primary application, that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single matter. This hearing comprised the Tenants' claims for S. 51 compensation, and the Landlord's cross application claims for monetary compensation at the end of the tenancy. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request for S. 51 compensation and their claim for recovery of the application filing fee at this proceeding. The Landlord's other claims are dismissed with leave to re-apply.

### Issues to be Decided

1. Are the Tenants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on December 1, 2020. Monthly rent was \$1,600.00 payable on the first day of each month, plus the Tenants were responsible for 30% of the hydro and gas bills. The tenancy agreement stated that the Tenants were responsible for 33% of the hydro and gas bills. A security deposit of \$800.00 was collected at the start of the tenancy and was returned by the Landlord in August 2021. The Tenants vacated the rental unit on August 2, 2021.

The express reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was July 15, 2021.

The Landlord testified that her mother needed the living space because an aunt needed help moving out of her home, and her mother was needed to be close by. The Landlord stated that she intended to use most of the rental unit space for her mother's use. The Landlord's mother moved into the rental unit around August 16, 2021. The Landlord's mother stated she moved in a bed, table and chairs, and a couch for her stay in the rental unit. The Landlord's mother used the second bedroom, kitchen and living room in the rental unit while she temporarily lived there to help her sister.

The Landlord stated she resides in the upper floor of the home. Her bedroom and kitchen are on the upper floor of the home. The Landlord stated around this same time, her boyfriend also moved into the home with the Landlord. The Landlord argued that she used *"to hang with my mother in the [downstairs] kitchen"*. She said she sometimes slept on the couch and shared meals with her mother. The Landlord stated that she used the master bedroom in the rental unit as gym space, and an extra space for storage.

The Landlord was asked if there were extenuating circumstances that prevented her from living in the rental unit, and the Landlord said, *"technically she moved into the suite in one bedroom, and her mother used the remainder of the downstairs, I had my whole house back."*

The Tenants testified that the Landlord did not provide compensation to them for the one month rent payable after receiving the Section 49 Two Month Notice pursuant to Section 51(1) of the Act. The Tenants stated they stayed in the rental unit until August 2, 2021 and are claiming \$1,496.77 which is one month's rent less the two days in August they remained in the rental unit.

The Tenants are also claiming \$19,200.00 which corresponds to 12 months compensation pursuant to Section 51(2) of the Act because, they claim, the Landlord did not use the rental unit for the stated purpose noted in the Two Month Notice.

### Analysis

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. 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. I find the onus is on the Landlord to prove that she accomplished the stated purpose for ending the tenancy under Section 49 of the Act and that she used the rental unit for its stated purpose for at least 6 months.

The Landlord ended the tenancy with the Tenants for Landlord's use of the property. The stated purpose proffered by the Landlord in her Two Month Notice was that the Landlord or the Landlord's spouse will occupy the rental unit for a duration of at least six months.

Section 51 of the Act states:

### ***Tenant's compensation: section 49 notice***

- 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.*
- (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.*
- (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 applicable, from*
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and*
  - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

The Tenants are entitled to Section 51(1) compensation, one month's rent payable, from the Landlord further to receiving the Two Month Notice. The Tenants stated they stayed two more days into August and rightly deducted those two days off the rental payment amount. I grant the Tenants **\$1,496.77** compensation pursuant to Section 51(1) of the Act.

The stated purpose in the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse would reside in the rental unit. At the time of issuing the Two Month Notice to the Tenants, the Landlord's boyfriend had also moved into the Landlord's home. The Landlord moved gym equipment and additional storage items into the master bedroom in the rental unit.

RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member is intended to assist parties to an application understand issues that are likely to be relevant after a Landlord issues a Section 49 notice. Policy Guideline 2A describes what is meant by occupying the rental unit, it states:

*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.” (See for example: Schuld v. Niu, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.*

The Landlord's mother moved into the rental unit around August 16, 2021. The Landlord's mother stated she moved in a bed, table and chairs, and a couch for her stay in the rental unit. The Landlord stated she resides in the upper floor of the home, and her bedroom and kitchen are both upstairs. The Landlord maintained that she spent time with her mother in the [downstairs] kitchen, and she sometimes shared meals with her mother.

When issuing a Two Month Notice, a Landlord cannot substitute another purpose set out in 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 Landlord took back the master bedroom in the rental unit for her gym equipment and for storage. The Landlord testified that her intention for the remainder of the rental unit was for her mother's use while she was busy helping the Landlord's aunt to relocate. I find the Landlord did not intend to occupy the rental unit as indicated on the Two Month Notice.

RTB Policy Guideline #50: Compensation for Ending a Tenancy assists the public addressing requirements for a landlord to pay compensation to a tenant when:

...

*a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given;*

...

I find the Landlord failed to use the rental unit for the stated purpose as specified in the Section 49 notice. Section 51(3) of the Act can excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose ... from using the rental unit for the stated purpose for at least 6 months.

Policy Guideline #50 discusses what may be considered an extenuating circumstance:

#### ***E. 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 one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

The Landlord stated technically she had moved into the one bedroom of the rental unit, and her mother used the remaining space. I find that the Landlord was not occupying the rental unit as part of her existing living accommodation. I find that visiting with a

parent, or sharing a meal with a parent, especially when you have your own interpersonal relationship with a partner in the upper floor of the house is not using the rental unit as part of a living accommodation. Moving some of the Landlord's items into one bedroom was not '*technically*' living in the rental unit, and the Landlord provided no explanation that there were extenuating circumstances that prevented the Landlord from accomplishing the stated purpose.

Based on the totality of the Landlord's evidence, I find the Landlord did not accomplish the stated purpose for ending the tenancy for Landlord's Use on a balance of probabilities and she is not excused from paying compensation to the Tenants specified under Section 51(2) of the Act.

The Tenants are entitled to compensation in the amount of **\$19,200.00** pursuant to Section 51(2) of the Act. As the Tenants are successful in their claim, they are entitled to recovery of the **\$100.00** application filing fee. The Tenants total Monetary Award is determined as follows:

#### Monetary Award

Compensation	Amount
S. 51(1)-one month's rent less two days	\$1,496.77
S. 51(2)-12 months rent	\$19,200.00
Application filing fee	\$100.00
<b>TOTAL:</b>	<b>\$20,796.77</b>

#### Conclusion

I grant a Monetary Order to the Tenants in the amount of \$20,796.77. 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 of British Columbia 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 Act.

Dated: September 26, 2022

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Residential Tenancy Branch