# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNETC, FFT

Introduction

On January 31, 2022, 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*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was originally set down to be heard on May 13, 2022, at 1:30 PM, but was subsequently adjourned pursuant to an Interim Decision dated May 13, 2022. The final, reconvened hearing was set down for September 9, 2022, at 1:30 PM.

The Tenant attended the final, reconvened hearing. The Landlord attended the final, reconvened hearing as well, with I.G. attending as counsel for the Landlord. 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 I.G., provided a solemn affirmation.

At the original hearing, service of the Notice of Hearing package was discussed and accepted. However, there were service issues regarding the parties' evidence. As such, pursuant to the Interim Decision dated May 13, 2022, the parties were directed to re-serve their evidence.

At the final, reconvened hearing, the Tenant advised that she re-served her evidence to the Landlord's counsel on May 17, 2022, and I.G. confirmed that he received this documentary evidence. Based on this undisputed testimony, as this evidence was served in accordance with the Interim Decision, I have accepted this documentary evidence and it will be considered when rendering this Decision.

I.G. advised that the Landlord's evidence was served to the Tenant by email approximately eight days prior to the hearing, and then additional evidence was served to the Tenant by email on September 8, 2022. The Tenant confirmed that she received this evidence. As well, she stated that she was prepared to respond to this late evidence. Based on this undisputed testimony, despite the Landlord not complying with the Interim Decision regarding timeframes for service of evidence, as the Tenant was prepared to respond to the Landlord's late evidence, I have accepted all of the Landlord's documentary evidence and it will be considered when rendering 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")?
- Is the Tenant entitled to recover the filing fee?

## 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 originally started with a different landlord on September 1, 2018, that the Landlord subsequently purchased the rental unit, and that the tenancy ended on February 28, 2020, pursuant to the effective date on the Notice.

The Landlord was not sure how much rent was; however, the Tenant stated that rent was established at $1,655.00 per month, and was due on the first day of each month. A signed copy of the tenancy agreement, indicating that rent was $1,655.00 per month, was submitted as documentary evidence by both parties.

I.G. confirmed that all of the conditions of the sale of the rental unit were satisfied, and that the Landlord asked the seller in writing to serve the Notice on the Tenant because he intended in good faith to occupy the rental unit. The parties agreed that this Notice was served to the Tenant by hand on November 23, 2019. The reason for service of the Notice was because “All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.” The effective end date of the tenancy was noted as February 29, 2020, on the Notice.

The Landlord advised that his realtor showed him the condition of the rental unit, and the house condition was “so poor” that he did not even enter it. He confirmed that he purchased the rental unit, and that due to the condition of it, he moved his possessions into the barn. He stated that this son was contemplating moving in, but could not because of the condition. He testified that he started a renovation of the rental unit that took one and a half years to complete, and he confirmed that neither he, nor a close family member, moved into the rental unit.

I.G. advised that all of the conditions for the sale of the rental unit had been satisfied and the Landlord asked the seller, in writing, to give this Notice because he intended in good faith to occupy the rental unit; however, renovations took a considerable amount of time. He referenced the Contract of Purchase and Sale, submitted as documentary evidence, to support this position. He stated that, in addition to the dilapidated rental unit, there was also a barn and workshop on the 16-acre property.

He referred to the addendum to the tenancy agreement to support the position that the rental unit was not in an ideal, habitable condition, and that as a result, there may have been potential safety concerns. He cited documentary evidence of receipts for work conducted and applications to the city for permits to demonstrate the condition of the property and the extent of required work to make the property liveable. He stated that the well dried up and that the Landlord was required to put in a connection to have water supplied to the property.

He stated that the rental unit was re-rented approximately 18 months after the renovations were completed. As well, he indicated that the Landlord's son married, and due to the extensive wait for the renovations to be completed, he no longer needed to use the rental unit. He submitted that the Landlord only viewed the rental unit after the Notice was given and that the Landlord occupied the rental unit by virtue of parking his vehicles on the property. When he was asked to explain the nature of his submissions, he then indicated that these were provided to demonstrate that there were extenuating circumstances that prevented the Landlord from using the property for the stated purpose after the effective date of the Notice. He stated that the extenuating circumstance was that the condition of the rental unit was so poor, that the Landlord could not live there, and the Landlord mistakenly served the wrong notice to end the tenancy.

The Tenant advised that the Notice was served because the Landlord would occupy the rental unit; however, neither the Landlord nor a close family member ever did. She testified that she would drive by every day between March and June 2020, to drive her child to school, and there was no evidence that the Landlord lived there. Rather, she stated that the Landlord did renovate the rental unit. She referenced online ads, submitted as documentary evidence, that were posted of the rental unit to demonstrate that the Landlord eventually re-rented the rental unit.

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 Landlord's right to end a tenancy in respect of a rental unit when the Landlord enters into an agreement in good faith to sell the rental unit, where all of the conditions on which the sale depends have been satisfied, and where the Landlord has asked the seller, in writing, to give notice to end the tenancy because the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by that landlord, 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.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that all of the conditions on which the sale depends have been satisfied and that the Landlord asked the seller, in writing, to give the Notice because he, or a close family member of the Landlord, intend in good faith to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated November 23, 2019 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*
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> > *(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.*
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> *(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*
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> > *(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.*

At the time the Notice was served, I.G. attempted to suggest that the intention was for the Landlord, or a close family member of the Landlord, 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 Landlord 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 Landlord, 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 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." In addition, this policy guideline outlines that "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."

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.
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> 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.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was because all of the conditions on which the sale depends have been satisfied, and the Landlord has asked the seller, in writing, to give the Notice because he, or a close family member of the Landlord, intends in good faith to occupy the rental unit. However, in considering the Landlord's submissions, I have some concerns. While the Landlord confirmed that neither he, nor a close family member, ever occupied the rental unit, I.G. attempted to suggest that the Landlord's act of having commercial vehicles parked on the property would be considered "occupation of the rental unit." However, I fully reject this submission as I do not find that parking vehicles on the property would meet the requirement, or definition, of occupying the rental unit. Given the undisputed, solemnly affirmed testimony of the Landlord indicating that neither he, nor a close family member, ever occupied the rental unit after the effective date of the Notice, I am satisfied that the rental unit was not used for the stated purpose for at least six months from the effective date of the Notice, as required by the *Act*.

As such, the only issue I must consider now are extenuating circumstances. I note that Policy Guideline # 50 outlines the following about extenuating circumstances:

> The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.
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> 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:
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> - 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.

- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

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.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

The consistent and undisputed evidence before me is that the effective date of the Notice was February 29, 2020, and I am satisfied that neither the Landlord, nor a close family member, ever occupied the rental unit after the effective date of the Notice. While I.G. attempted to advance the argument that the “poor” condition of the rental unit was a surprise to the Landlord, and this caused him to have to renovate the rental unit to bring it up to a habitable condition, I do not find it reasonable to accept that this would meet the criteria that establishes extenuating circumstances.

I find it important to note that the Landlord initially testified that his realtor showed him the condition of the rental unit, but he would not enter it because of its “poor condition”. However, I.G. then later contradictorily advised that the Landlord only viewed the rental unit after the Notice was served. As these submissions directly contradict each other, I find that I am doubtful of the truthfulness of when the Landlord was aware of the alleged condition of the rental unit. Moreover, this inconsistency causes me to be skeptical of the credibility of the Landlord’s submissions on the whole.

Regardless, even if I were to accept that the condition of the rental unit was truly unliveable, and that the Landlord was unaware of this condition prior to service of the Notice, I find it important to emphasize that extenuating circumstances would be considered as “matters that could not be anticipated or were outside a reasonable owner’s control.” Clearly, the Landlord had every opportunity to view the rental unit to assess it, and then determine if it was suitable for purchase. If the Landlord did not do

his due diligence, and subsequently purchased the property anyways, I reject the notion that the Landlord can come back now and suggest that the alleged condition of the rental unit could not have been reasonably anticipated.

Furthermore, there is no documentary evidence before me, and there were no submissions made, that the rental was in suitable condition for habitation at the time the Notice was served, and that its condition somehow degraded between service of the Notice and the effective end date of the tenancy.

In assessing the totality of the evidence before me, and given the fact that I.G. acknowledged that the Landlord served the wrong Notice, I am satisfied that the rental unit was not used for the stated purpose for at least six months from the effective date of the Notice. Furthermore, I do not accept the Landlord's submissions for not using the rental unit for the stated purpose for at least six months from the effective date of the Notice would actually constitute extenuating circumstances, nor do I find these submissions credible. I am satisfied that these submissions were, more likely than not, crafted after receiving the Notice of Hearing package in an attempt to portray an alternate scenario, and I find these to be entirely fictitious.

Ultimately, I am satisfied that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. Given that the tenancy agreements submitted by both parties indicated that rent was $1,655.00 per month, I grant the Tenant a monetary award in the amount of **$19,860.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

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| 12 months' compensation | $19,860.00 |
| Filing fee | $100.00 |
| **TOTAL MONETARY AWARD** | **$19,960.00** |

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$19,960.00**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 20, 2022

Residential Tenancy Branch