



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC

Introduction

This hearing originally convened on May 17, 2022 and was adjourned to September 13, 2022 in an Interim Decision dated May 17, 2022. This decision should be read in conjunction with the May 17, 2022 Interim Decision. This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

Tenant N.F. (the "tenant"), counsel for the tenants ("counsel") and the respondents attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision.

Both parties agree that the tenant personally served the respondents' 17-year-old son with the tenants' application for dispute resolution and some evidence at the subject

rental property on or about October 15, 2021. The respondents testified that they received the package from their son on October 15, 2021. I find that the respondents were sufficiently served, for the purposes of this *Act*, with the above documents, in accordance with section 71 of the *Act*, because receipt was acknowledged.

Counsel submitted that a second evidence package was served on the respondents via registered mail on or around April 26, 2022. The respondents testified that they received the above package on or around April 29, 2022. I find that the above package was served on the respondents in accordance with section 88 of the *Act*.

The respondents testified that they served the tenant with their evidence via registered mail on May 4, 2022. Counsel for the tenant confirmed receipt. I find that the respondents' evidence was served on the tenant in accordance with section 88 of the *Act*.

Preliminary Issue- Dismissal

The tenant testified that the tenants' section 67 monetary claim for damage or compensation under the *Act*, totalling \$6,000.00, are all damages that arose from their eviction from the subject rental property, pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 25, 2020 (the "Notice"). The tenant testified that the tenants are also seeking 12 times the monthly rent pursuant to section 51 of the *Act* because the respondents did not move into the subject rental property within a reasonable period of time after the tenants were evicted.

The 12 months rent payable under section 51 of the *Act* is meant to compensate a tenant for damages arising out of the failure of a landlord to comply with the Notice. I find that to award the tenant the statutory claim in section 51 of the *Act* and damages stemming from the tenant's move, pursuant to section 67 of the *Act*, would amount to double compensation, which is not intended by the *Act*. I therefore dismiss the tenants' \$6,000.00 claim for damage or compensation under the *Act*, without leave to reapply.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 67 of the *Act*, there is a requirement that the party claiming compensation must do whatever is reasonable to minimize their loss. One way to minimize their loss is by applying for compensation pursuant to s. 51(2) of the *Act*, not pursuant to both section 51 and section 67 of the *Act*. I find that the above failure to mitigate is fatal to the section 67 claim. For these reasons, in addition to my reasons above, the section 67 claim is dismissed without leave to reapply.

Issue to be Decided

1. Are the tenants entitled to a Monetary Order for compensation from the respondents related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and respondents' claims and my findings are set out below.

The tenant testified that this tenancy began on December 1, 2017 with different landlords. Both parties agree that the respondents in this application for dispute resolution purchased the subject rental property and asked the previous landlords in

writing to serve the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Both parties agree that the tenant was served with the above notice to end tenancy on or around November 25, 2020. The tenant testified that he moved out of the subject rental property at the end of January 2021 pursuant to the Notice.

The Notice dated November 25, 2020 was entered into evidence and states that the tenant must vacate the subject rental property by February 1, 2021 because:

All of the conditions for 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 tenant testified that the respondents did not move into the subject rental property within a reasonable period of time after he was evicted. The respondents testified that they moved in immediately and have resided at the subject rental property since early February 2021.

Both parties entered into evidence the form titled "Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession", dated November 3, 2020, pertaining to the subject rental property which states:

- The respondents have entered into a Contract of Purchase and Sale dated October 27, 2020 in respect of the purchase and sale of the subject rental property (the "Purchase Agreement").
- All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- The Property is currently rented to tenant(s).
- The respondents intend in good faith to occupy the subject rental property.
- In accordance with section 49 of the *Act* the respondents hereby request that the sellers, as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Act*, terminating the tenancy and requiring the tenants to vacate the subject rental property by 1:00 p.m. on February 1, 2021.

The Contract of Purchase and Sale dated October 17, 2020 for the subject rental property was entered into evidence and states:

- The completion date is February 1, 2021,

- The possession date is February 2, 2021, and
- The subject removal date is November 3, 2020.

The tenant testified that rent for the subject rental property was \$2,400.00 per month. This was not disputed by the respondents. The tenant entered into evidence a tenancy agreement with the previous landlords stating same.

The respondents testified that prior to purchasing the subject rental property, they rented a home from different landlords. The respondents entered into evidence the tenancy agreement between themselves and different landlords which states that the tenancy term started on October 1, 2019 on a month to month basis.

The respondents testified that their landlord ended their tenancy due to the sale of the rental property they were renting, effective October 1, 2020. The respondents entered into evidence an email from their landlord dated July 28, 2020 which states:

As per our conversation earlier today, please accept this as a formal notice to terminate your lease at [address of respondents' rental residence]. This will be effective October 1, 2020.

The respondents testified that after they received notice to end their tenancy, they started to look for a property to buy. The respondents testified that after they received notice to end their tenancy, they arranged with their landlord to extend the tenancy on a month-to-month basis while their landlord sought permits with the city for renovations.

The respondents written submissions state that on December 18, 2020 they provided their landlord with notice to end their tenancy effective at the end of January 2021. The respondents entered into evidence an email dated December 18, 2020 which states:

Just wanted to give you a heads up...we will end our tenancy at [the address of respondents' rental residence] at the end of January.

We take possession of our new house February 1, 2021.

Depending on your plans, we hope to be able to stay a few days into February to make the move.

Lets touch base in the New Year.

The respondents testified that in preparation for moving into the subject rental property they moved their utilities over to the subject rental property, got home insurance and arranged mail forwarding.

The respondents entered into evidence an email chain between the respondents and their insurance provider. The following relevant communications were made on the following dates:

- December 7, 2020
 - Insurance Advisor: Hi [respondent T.T.] What is the plan with property will you be moving in
 - Respondent T.T.: Yes we will leave our rental at [address of respondents' rental residence] upon possession Feb 1, 2021.
- January 4, 2021
 - Insurance Advisor: Hi [respondent T.T.] Will transfer insurance over to new home will send documents late this week, going to be away for couple of days.
- January 18, 2021
 - Just wanted to clarify, we are purchasing this home and it will be our primary residence. The lawyer has instructed that we will need "comprehensive homeowner insurance policy with full replacement cost coverage effective 12:01 am February 1st (completion date)"...

The respondents entered into evidence mail forwarding by Canada Post purchased on February 6, 2021 for the period of February 12, 2021 to February 11, 2022. The mail forwarding details state that the origin location is the address of respondents' rental residence, and the destination is the subject rental property. The service is described as "Permanent Mail Forwarding for Residential – 12 Months".

The respondents entered into evidence a Fortis BC invoice in which both the address of respondents' rental residence and the subject rental property can be seen. The quality of the copy is poor and it is difficult to make out other details.

The respondents entered into evidence a BC Hydro invoice for the period of December 11, 2020 to February 3, 2021. The service address is the address of respondents' rental residence. The respondents entered into evidence a BC Hydro invoice for the period of February 2, 2021 to March 18, 2021. The service address is the address of the subject rental property.

The respondents entered into evidence a cable/internet invoice bearing the address of the respondents' rental residence from January 23, 2021 to February 22, 2021. The respondents entered into evidence a cable/internet invoice at the address of the subject rental property from February 23, 2021 to March 21, 2022.

The respondents testified that they hired movers to move all of their possessions from their rental residence to the subject rental property on February 3, 2021. The respondents entered into evidence an email exchange between themselves and a moving company. The following relevant communications were sent by the respondents to the moving company on the following dates.

- January 4, 2021
 - Thank you for chatting with me today. Here are the details of our move. Please let me know if you need anything further.
 - MOVE DAY: TUESDAY, FEBRUARY 2ND
 - PICK UP LOCATION: [address of respondents' rental residence]
 - NEW HOUSE LOCATION: [address of subject rental property]
- January 4, 2021
 - We take possession of the house on FEB 2, so the following day will be a better time to move.
- January 6, 2021
 - Can you confirm we are booked for moving Feb 3, morning?

The following relevant communications were sent by the moving company to the respondents on the following dates.

- February 1, 2021
 - Hi [respondent T.T.], thank you for your email. Your move is booked on Feb 3rd. Is it possible to start at 9:00 am?

The respondents entered into evidence a bank statement which states that they sent an e transfer in the amount of \$262.50 to the above moving company on January 11, 2021 and a subsequent payment of \$1,731.83 on February 3, 2021.

The tenant testified that the subject rental house is divided into an upper and a lower suite. The tenant testified that there was a door inside the house separating the suites and that each suite had its own separate entrance. The tenant testified that he resided in the upper suite and another tenant, who was also served with a Two Month Notice to End Tenancy for Landlord's Use of Property around the same time, resided in the lower suite. The tenant testified that the upper suite had some space on the lower level.

The tenant entered into evidence a signed letter from C.A. which states:

- he rented the ground floor suite at the subject rental property from July 15, 2018 to January 31, 2021.
- He moved out pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property that he was served on November 25, 2020.
- The reason stated on the above notice to end tenancy was that "All 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 purchaser stated on the above notice to end tenancy was respondent M.M.

The respondents testified that as far as they were aware, only tenant N.F. had a lease with the previous landlords and that the previous landlord rented out rooms in the subject rental house. The landlords testified that regardless of how the home was used prior to their purchase of the property, the house is a single-family home and that is how they are using it.

The respondents testified that a city official confirmed that the subject rental property is a single-family dwelling and that while there is a second kitchen on the ground floor, part of what the tenant defined as the lower suite, it is not a legal suite. The respondents entered into evidence an email exchange between respondent M.M. and the Building Inspector's Branch of the subject rental City dated April 27, 2022 which states:

- Respondent M.M: ...You may recall last December you did a walk thru of my home at [address of subject rental house]. I am hoping you can respond to this email to confirm that there are no outstanding issues, and we are in good standing with the [subject rental city]?
- Building inspector: I didn't do a walkthrough of your entire house, so I can't verify that. But I did follow up with the complaint we received regarding the unapproved secondary suite and found that the secondary kitchen was approved and inspected by the city shortly after the house was built. The second kitchen does not make it a legal suite and is part of the main dwelling. Let me know if you need anything else.

The respondents testified that they moved into the entire home and since moving in have made many cosmetic upgrades including changing the flooring, installing new

blinds, renovating bathrooms and installing new appliances. The landlords testified that no permits were required for their renovations and that throughout the renovations, they have resided in the subject rental house and have used rooms in both areas defined by the tenant. as the upper and lower suite.

The respondents entered into evidence receipts for the following renovations:

- Building base cabinets and finishing ducting and grout,
- New countertops,
- New appliances, and
- New flooring

The tenant testified that he believes the respondents renovated the subject rental property before moving into it in June of 2021.

One of the receipts for new appliances entered into evidence is for a new gas stove top. Both parties agree that the original stove top was electric. Counsel submitted that the respondents would have needed to have a permit to install a gas line to supply the new gas stove top. The respondents testified that new gas lines were not installed.

The respondents testified that a City inspector viewed the main floor (lower unit) and the kitchen and living room of the upper floor and did not find anything amiss, as evidenced by the April 27, 2022 email exchange with the City inspector reproduced above. Counsel submitted that as stated in the April 27, 2022 email from the inspector, the inspector did not view the entire house and did not confirm that no other issues were present.

Counsel for the tenants submitted that the Notice was issued in bad faith because:

- a. Instead of occupying the subject rental property, the respondents performed substantial renovations without permits, and
- b. In defiance of the purpose of ending the tenancy provided in the Notice, the respondents or a close family member of the respondents failed to occupy the subject rental property for at least five months or more.

The tenant testified that when the respondents originally viewed the subject rental property they brought with them a renovation specialist. The tenant testified that he has looked into the subject rental property and has seen that there are no blinds, no furniture and no lights. The tenant testified that after he was evicted, no-one lived at the

subject rental property until June of 2021. The tenant testified that the failure of the respondents to move in made him believe this was a bad faith eviction.

The respondents testified that they did not bring a contractor with them to the viewing of the subject rental house, but did bring with them respondent M.M.'s brother. The respondents testified that they wanted an extra pair of eyes to view the property because the sale was not on condition of inspection due to the hot real estate market.

The tenant entered into evidence photographs of the subject rental house, taken from the outside. The tenant testified that the photographs show that the subject rental property does not have furniture and that the upstairs suite, where he lived, is empty; however, the tenant's above description cannot be made out in the photographs submitted.

The tenant entered into evidence one photograph that he testified was taken on February 5, 2021. The February 5, 2021 photograph bears the following written description:

- Upper Suite: [tenant N.F.] suite: Living Room: Original Blinds remain up, bedroom is empty, kitchen is empty. No apparent furniture upstairs. No indication of renovations yet or inhabitants.
- Lower suite: Renovating ground floor, someone working on the walls at the back of the living room with hands over head.

The photograph shows two windows on the lower level of the home; however, the windows appear very dark and it is difficult to see through the windows. A light can be seen and possibly the form of a person.

The tenant entered into evidence a photograph that he testified was taken on February 8, 2021. The February 8, 2021 photograph bears the following written description:

- Lower Suite: Landlord renovating ground floor, lights and fans on. Drying something and airing out renovations.

In that photograph the lights are on, and a fan can be seen in the window.

The tenant entered into evidence a photograph that he testified was taken on February 16, 2021. The February 16, 2021 photograph bears the following written description:

- Upper Suite: [tenant N.F.] suite: Living Room: Original Blinds remain installed, Master bedroom is empty, kitchen is empty. No Patio Furniture yet. No indication of renovations upstairs yet.
- Lower suite: Blinds open on both ground floor windows. Both rooms empty of furniture. No fence or shed.

The above photograph is of the subject rental property and appears to have been taken across the street. Most of the blinds are shut and those that are not cannot be seen through due to the distance of the photograph.

The tenant entered into evidence photographs that the tenant's written submissions state were taken on March 11, 2021. The above photograph bears the description:

- Upper Suite: [tenant N.F.] suite: Living Room: All blinds removed and is empty, master bedroom is empty, kitchen is empty.
- Indication of renovation waste upstairs with materials on deck and fence construction. All lights off.

Five photographs under the March 11, 2021 heading were entered into evidence. The photographs show the subject rental property at night. The photographs appear to be taken from across the street and in front of the house. The photographs show that the lights upstairs are off and lights near the downstairs entrance and another downstairs room appear to be on. It is too dark to see through the windows where the lights are off and the other windows have their blinds drawn.

The tenant entered into evidence 3 photographs that the tenants' written submissions state were taken on June 3, 2021. The above photographs bear the following description:

- Upper Suite: [tenant N.F.] suite: Living Room: empty, door open, blinds up, master bedroom is empty, kitchen is empty. Renovations continue.
- Empty living room, door and new blinds open
- Some kind of equipment being installed or thrown away
- Empty living room, new blinds up

One photograph shows an open sliding glass door on the top floor leading onto a balcony. The inside of the subject rental property cannot be made out. The second photograph shows a tarp and some materials next to a car in the driveway. The third photograph shows the second-floor windows. Due to the reflection in the windows and

the lighting, it is not possible to see inside. The glass appears dark. The sliding glass door is open. The inside of the subject rental property cannot be seen.

The tenants entered into evidence 2 photographs that the tenants' written submissions state were taken on June 17, 2021. The above photographs bear the description:

- Upper Suite: [tenant N.F.] suite: Living Room: All blinds up, 2 seat couch. Indication of ongoing renovations upstairs with materials on deck.

The first photograph is of the sliding glass door on the top floor leading on the balcony which shows a fan and another item on the balcony. The second photograph shows upstairs windows. Due to the glare and lighting, nothing inside can be seen.

The tenants entered into evidence 1 photograph that the tenants' written submissions state was taken on August 9, 2021. The above photograph bears the description:

- Upper Suite: [tenant N.F.] suite: Looks lived in now. Now there is a dog living there. Was it living there before?

The photograph shows a dog looking out of an open window.

The tenants entered into evidence a text exchange between tenant N.F. and a neighbour of the subject rental property dated July 13, 2021 which states:

- Tenant N.F.:
 - Have they finished moving in?
- Neighbour:
 - not sure i understand your Q. they completely moved in in June. they are diy renovating.

The respondents written submissions state that the above neighbour is the neighbour at the rear of the subject rental property and does not have a direct sight line of the front of the subject rental property and cannot monitor the comings and goings of the respondents.

The respondents testified that after receiving the tenant's evidence they showed the above neighbour the July 13, 2021 text message with the tenant and sought her response. The respondents entered into evidence a text message exchange between the respondents and the above neighbour which shows that the respondents sent the neighbour a screen shot of the July 13, 2021 message exchange.

In response, the neighbour texted:

“thanks. i don’t understand how it hurts you? It’s only what I noticed. Doesn’t mean you weren’t there earlier. i actually didn’t seem to get his question...

Counsel submitted that the original July 13, 2021 text from the neighbour has more integrity than the neighbour’s text to the respondents.

The respondents testified that shortly after moving in, they met the above neighbour as evidenced by the following text exchange between them, which was entered into evidence:

- February 26, 2021
 - Neighbour: Hi [respondents] This is your neighbour [names redacted for privacy] [address of neighbour]
- March 2, 2021
 - Respondents: Hi [neighbour]. We are planning for a cedar fence between our houses. It will run in front of your retaining wall in the front yard. Just wanted to let you know.
 - Neighbour: thanks
- March 5, 2021
 - Neighbour: between our house is a pile of lumber. Can a have a couple of posts.
 - Respondents: Ok thanks
 - Neighbour: thanks
- March 11, 2021
 - Neighbour: What plans do you have for the cement blocks?? Please let me know if y can spare any.
 - Respondents: Ok, will le you know
- March 19, 2021
 - Neighbour: Hi [respondent M.M.] i know i said i wouldn’t be using the posts n lumber, but the neighbour across the way has offered to cut for me to make garden stakes. if you have no use for them could we use them? [Neighbor]
 - Respondents: Hi [neighbour] Sure, you can use them

The respondents entered into evidence a text message they testified was from their neighbour who lives directly across the street which states that the respondents moved in in February of 2021.

Counsel submitted that the respondents did not accomplish the stated purpose for issuing the Notice within a reasonable period of time because the respondents did not move in until at least after June 1, 2021 due to the major renovations they completed after purchasing the subject rental property. Counsel submitted that moving in five months after the effective date on the Notice is not a reasonable time for occupation to begin.

Counsel submitted that the respondents accomplished the renovations without the required permits. Counsel submitted that because substantial renovations were completed before the respondents moved in, the tenant should have been served with a Four Month Notice to End Tenancy for Renovation or Repair under section 49(6) of the *Act*, not the Notice under section 49(5) of the *Act*.

Counsel for the tenants cited *Schuld v. Niu*, 2019 BCSC 949 ("*Schuld*") for the proposition that the respondents were not permitted to do any renovations to the subject rental property before moving in.

Counsel submitted that in *Schuld* the court says that renovations are not to be the reason for eviction when a Two Month Notice to End Tenancy for Landlord's Use of Property ends the tenancy. Counsel submitted that the renovations completed at the subject rental property were the primary motivating factor for evicting the tenants.

Counsel submitted that the respondents had an ulterior motive in serving the tenant the Two Month Notice instead of the Four Month Notice, in that the tenants either didn't want to get permits to do the renovations or they wanted to reduce the compensation they were required to provide the tenant for ending the tenancy. Counsel submitted that the respondents did not act in good faith.

The respondents testified that good faith requires an honest intention with no ulterior motive. The respondents testified that they asked the landlord to serve the tenant with the Notice because they honestly intended on moving into the entire house and residing there with their children. The respondents testified that they moved into the subject rental property and have resided in it since early February 2021. The respondents testified that the completed cosmetic renovations over several months while they resided in the subject rental property.

The respondents entered into evidence the following date stamped photographs:

- February 13, 2021: Photo of exterior of subject rental house

- March 11, 2021: Photo of playhouse being delivered
- April 1, 2021: Photo of new flooring with caption “reno progress- hardwood floors are installed upper level”
- April 1, 2021: Photo of bathroom tiles with caption “Reno progress- bathroom tiling”
- May 26, 2021: Photo of window with caption “reno progress - window covering installation”
- May 27, 2021: Photo of kitchen sink and counter with caption “reno progress – counter and fixture installation”
- June 12, 2021: Photo of person on deck with caption “enjoying the outdoor deck”
- June 13, 2021: Photo of bedroom with caption “daughter’s room on upper floor”

The respondents also entered into evidence the following photographs that were not date stamped:

- Two photographs of person in living room with caption “main floor living room – family settled in after Feb 3 move”
- Photograph of kitchen sink fixture being held up, background is a furnished living room. No caption is present
- Photograph of brewing supplies with caption “life at [street of subject rental house] – hobby work in the garage at [street of subject rental house] House”

Counsel submitted that the most convincing evidence listed about is the photograph of the bedroom but notes that the date is June 13, 2021, many months after the eviction.

The respondents testified that from February 2021 forward they were just living their lives as normal at the subject rental house and were not building a case by taking photographs of the inside of the subject rental house which is why they do not have more photographic evidence.

Analysis

Based on the testimony of both parties I find that the tenants were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the Notice because service was acknowledged.

Section 49(5) of the *Act* states:

- (5)A landlord may end a tenancy in respect of a rental unit if
- (a)the landlord enters into an agreement in good faith to sell the rental unit,
 - (b)all the conditions on which the sale depends have been satisfied, and
 - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[Emphasis added]

Counsel made submissions regarding the good faith intention of the respondents when the respondents asked the landlord to serve the tenants with the Notice. The good faith requirement is found in section 49(5)(a) of the Act as seen above.

Residential Tenancy Policy Guideline 2A states in part:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA 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 (s.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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not 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 other ulterior motive.

Good faith usually comes into play if a tenant is seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, which is not the case in this dispute. This dispute is centered around section 51 of the *Act* which does not contain a "good faith" requirement. Section 51 of the *Act* states:

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) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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.

[emphasis added]

I find that a lack of good faith in the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property does not impact a section 51 claim. A section 51 claim turns on if:

(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.

Residential Tenancy Policy Guideline # 50 (PG #50) states:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish

the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving 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 at the end of the tenancy.

A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Based on the Contract of Purchase and Sale, I find that the sale of the subject rental house completed on February 1, 2021 and that the respondents took possession on February 2, 2021.

Based on the respondents' testimony and the communications entered into evidence between the respondents and their previous landlord, I find that the respondents ended their tenancy with their landlord on or around February 3, 2021 as stated in their December 18, 2020 email to their landlord.

The January 4, 2021 to February 1, 2021 email correspondence between the respondents and the movers clearly sets out that the respondents are moving from the address of their rental property to the subject rental property on February 3, 2022. The final payment made to the moving company was made on February 3, 2022, the day of the move.

Based on the communications between the respondents and their landlord, the respondents and their movers and the corroborating bank statement evidence, I find that the respondents have proved, on a balance of probabilities, that they moved into the subject rental house on February 3, 2021.

The above finding is further supported by the respondents' proof that they set up mail forwarding from their previous rental to the subject rental house from February 12, 2021 to February 11, 2022 and that the respondents set up utilities and internet at the subject rental house in February 2021.

In addition, the respondents entered into evidence correspondence with their insurance provider dated January 18, 2021 which states "Just wanted to clarify, we are purchasing this home and it will be our primary residence. The lawyer has instructed that we will need "comprehensive homeowner insurance policy with full replacement cost coverage effective 12:01 am February 1st (completion date)"...". I find that the above email supports the respondents' testimony that they moved into the subject rental house on February 3, 2021 and that they intended to use the entire house for their own use.

I find the photographs of the subject rental house entered into evidence by the tenant to be of little to no assistance as little to nothing of the inside of the subject rental property could be seen in the photographs.

Pursuant to my above findings, I find that the respondents accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, in accordance with section 51(2)(a).

It is uncontested that the respondents currently reside in the subject rental house. As I have found that the respondents moved into the subject rental house on February 3, 2021 and it is not contested that the respondents currently reside in the subject rental house, I find, on a balance of probabilities, that the respondents have resided in the subject rental house for over 1.5 years, in accordance with section 51(2)(b) of the *Act*.

I accept the respondents' testimony that they and their children have used the entire subject rental house for their use. It is uncontested that the respondents have completed renovations in the subject rental house. I find that the renovations occurred while the respondents and their family resided in the subject rental house. I find that it is reasonable for a family to occupy and reside in the entire house, which, I find, is designated as a single-family dwelling (as stated by the City inspector in the email dated April 27, 2022).

As I have found that the respondents accomplished the stated purpose for ending the tenancy within a reasonable period of time after the effective date on the notice and that the rental unit 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, I find that the tenant is not entitled to 12 months' compensation under section 51 of the *Act*. The tenant's application is therefore dismissed without leave to reapply.

I find that fact pattern in *Schuld* is markedly different than the case at hand and is easily distinguished. *Schuld* is a Judicial Review of a Residential Tenancy Branch Decision. In *Schuld*, the landlord served the tenant with a Two Month Notice for Landlord's Use of Property because the rental unit was to 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). It was uncontested, in that case, that the landlord or a close family member of the landlord, never moved into the subject rental property. This is not the case in this application as I have found that the respondents did move in.

In *Schuld*, the original arbitration decision was cited at paragraph 13 as follows:

The Landlord issued the Notice pursuant to section 49(3). Notably, section 49(3) uses the word "occupy" not "reside" or "live in". Meaning must be given to the words actually used in the legislation. "Occupy" and "reside" have different meanings. Since the [Act](#) does not require the Landlord to "reside" in the rental unit, whether the Landlord actually resided or lived in the rental unit is not relevant.

Honourable Justice found at paragraphs 17-19 that the arbitrator did not use the correct definition of the word "occupy" when determining if the landlord occupied the subject rental property when the landlord held the property for the purpose of demolishing it but did not move in. The Honorable Justice found at paragraph 17 that:

The arbitrator has chosen to expand the definition of the word "occupy" in s. 49(3) so that it encompasses and takes within it, therefore, ss. (6), which is the subsection relating to demolishing the rental unit. In my respectful view, that deprives ss. (6) of practically all meaning. The result would be that landlords could give notice under s. 49(3) even if s. 49(3) is not applicable, but s. 49(6) is applicable.

In this application, the respondents correctly instructed the previous landlord of the subject rental house to use section 49(5) of the *Act* to evict the tenants. Section 49(5) of the *Act* applies because the respondents purchased the subject rental property and moved into it, as stated on the Notice.

I also note that PG #50 contemplates that some renovations may occur when a tenant is evicted for the landlord or close family member of the landlord moving in. As cited earlier in this decision PG #50 states:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

[Emphasis added]

I find that PG #50 acknowledges that the landlord is permitted to do some renovations as long as the landlord complies with section 51(2) of the *Act*. I find that *Schuld* does not prevent a landlord from completing renovations while residing at the subject rental property after moving into a property from which a tenant was evicted under section 49(5) of the *Act*.

Conclusion

The tenant's application for dispute resolution is dismissed 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 14, 2022

Residential Tenancy Branch