



# 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 the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants were represented by counsel. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants, counsel and I were the only ones who had called into this teleconference.

The tenants were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenants 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."

Counsel confirmed the tenants' email address for service of this Decision.

Preliminary Issue- Service and Naming of Parties

Counsel submitted that two landlords are named in this application for dispute resolution, landlord H.S. and a landlord numbered company. Counsel requested that landlord H.S.'s name be amended to include tenant H.S.'s middle name.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that landlord H.S. could reasonably have anticipated that, in a legal proceeding, the tenants would amend their application to include H.S.S. full name, including landlord H.S.S. middle name. Pursuant to section 64 of the *Act*, I amend the tenants' application for dispute resolution to include landlord H.S.S.'s middle name.

Landlord H.S.S. is listed as the Buyer/Purchaser on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), which is the subject of this dispute and landlord H.S.S. is listed as the Buyer/Purchaser on a "Tenant Occupied Property- Buyer's Notice to Seller for Vacant Possession" pertaining to the subject rental property. The above documents were entered into evidence.

Counsel entered into evidence a title search for the subject rental property which states that the registered owner in fee simple is the landlord numbered company. The BC Company Summary states that landlord H.S.S is one of two directors of the landlord numbered company.

Section 1 of the *Act* defines landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the title search of the subject rental property and the BC Company Summary, I find that the numbered company is the owner of the subject rental property and therefore meets the definition of a landlord found in section 1 of the *Act*. I find, on a balance of probabilities, that H.S.S, as a director of the numbered company is an agent of that numbered company and also meets the definition of a landlord under section 1 of the *Act*. I find that the landlords were properly named in this application for dispute resolution.

Counsel submitted that the landlord numbered company was served via posting on March 15, 2022 at the address listed as the numbered company's mailing address on the BC Company Summary. The tenants entered into evidence an affidavit of attempted service relating to the March 15, 2022 service which states that the process server attended at the registered mailing address of the numbered company on March 11, 2022 in an attempt to serve both landlords with the tenants' application for dispute resolution and evidence. No one answered the door on March 11, 2022, the process server left a delivery card on the door.

The Affidavit of Attempted Service goes on to state at paragraphs 4-10:

4. On March 12, 2022 at 2:38 p.m., I received a telephone call from [landlord H.S.S.]. The telephone number that showed up on call display was [redacted for privacy] "[H.S.S.]. He asked what I was trying to deliver, and I told him I had some documents for him regarding a Residential Tenancy matter. He proceeded to ask about what address I was talking about. I told him it is a tenancy matter regarding the [subject rental property], re [the tenants]. He proceeded to tell me that he does not have any tenants with this name, and that he thought that this was

“some kind of fraud”. I assured him that it was not fraud, and that I could deliver the materials to him, and he could handle it in whatever way he thought best. He told me that he would be home “later that evening” and we agreed that I would attend to serve then.

5. On March 12, 2022, at 7:41 p.m., I attended at [the mailing address of the landlord numbered company]. I could see lights on in the home. I knocked on the door and rang the doorbell, but there was no answer. I waited in my car for approximately 15 minutes, while calling and texting the phone number for [landlord H.S.S.], but there was no answer. I left two voicemails advising that I was at the door, but I did not get a response.

6. On March 13, 2022, at 3:24 p.m., I received a telephone call from [landlord H.S.S.]. He advised me that I could leave both packages at his door, and they would come to his attention. I stated that I would need to personally serve them and asked for a convenient time. I advised him that I could go whenever he was at any time. He reiterated that I could just leave them at his home address, but I stated that I could not. He said he would call me back.

7. As of March 15, 2022, [landlord H.S.S.] did not call me back, and he did not respond to any voicemail messages or texts.

8. I was instructed by counsel to tape the envelope addressed to [the landlord numbered company] to the door of [the registered mailing address of the landlord numbered company].

9. On March 15, 2022 at 2:00 p.m., I served [the landlord numbered company], alternatively, by posing the envelope to the door of [the landlord numbered company’s registered mailing address]. Attached hereto and marked as Exhibit “A” is a picture of the door at the time of service.

10. To date, I have been unable to personally serve [landlord H.S.S.], and I do verily believe him to be evasive.

The tenants applied for an Order of Substituted Service for H.S.S. which was granted in a Substituted Service Decision dated April 28, 2022. The April 28, 2022 decision states that landlord H.S.S. may be served via posting at the landlord numbered company’s registered mailing address.

Counsel submitted that the tenants' application for dispute resolution, evidence and a copy of the April 28, 2022 substituted service decision were posted on the door of the landlord numbered company's registered mailing address on May 17, 2022. An Affidavit of Service stating same was entered into evidence.

Based on the Affidavit of Service, I find that landlord H.S.S. was served with the above documents in accordance with the April 28, 2022 Substituted Service Decision.

I find that the landlord numbered company was sufficiently served with the tenants' application for dispute resolution and evidence, for the purposes of this *Act*, pursuant to section 71 of the *Act* because one of the director's of the landlord numbered company (landlord H.S.S.) advised the process server who was attempting to serve the landlord numbered company, that documents posted to the door of the landlord numbered company's registered mailing number would be received.

I also find that landlord H.S.S. received the card left by the process server because he called the process server after the card was delivered. I find that given that the card was received, it is likely that landlord H.S.S., on behalf of the landlord numbered company, received the dispute resolution materials. I accept the contents of the sworn affidavits of both process servers as true.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

### Background and Evidence

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

The tenants provided the following undisputed testimony. This tenancy began on May 1, 2014 and ended pursuant to the Notice on May 31, 2021. Monthly rent in the amount of \$1,012.70 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that they were served with the Notice on March 29, 2021 via email. Counsel submitted into evidence the Notice which states that the tenants must vacate the subject rental property by May 31, 2021. The reason for ending the tenancy on page two of the Notice is not selected; however, the purchaser information, which the Notice states should only be filled out if the purchaser asked for notice to be given, states that landlord H.S.S. is the purchaser.

The tenants entered into evidence an email dated April 6, 2021 from an agent of the landlord (the "seller") who served the Notice, which states:

Take notice an error in this notice does not make the notice invalid – and arbitrator can order that the tenant ends on the date I only missed 1 box and I am sorry for that but

The tenant occupied property buyers notice to seller for vacant possession has all of the correct dates or you to move out I a sorry for this I also have proof of when I sent the end of tenancy

The new owner because of the privacy act does not have to give you his address as he will not be keeping you as a tenant

He will be occupying the property

Included in the above email is the second page of the Notice, the reason for ending the tenancy is selected and states:

All 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 tenants entered into evidence a document titled "Tenant Occupied Property-Buyer's Notice to Seller for Vacant Possession" which is signed by landlord H.S.S which states:

**WHEREAS:**

- A. The undersigned (the “Buyer(s)”) and the Seller(s) have entered into the Contract of Purchase and Sale dated Mar 11, 2021 in respect of the purchase and sale of the above noted Property (the “Purchase Agreement”).
- B. 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.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(S) intend in good faith to occupy the Property.

**NOW THEREFORE** in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlords, give notice (the “Tenant Notice”) to the tenant(S) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 p.m. on May 31<sup>st</sup>, 2021.

The buyer listed on above document is landlord H.S.S. The Property in the above property is the subject rental property.

Tenant K.S. testified that she works near the subject rental property and drove by it after the eviction and noticed that there were construction/renovation materials outside the subject rental property.

The tenants entered into evidence screenshots of advertisements for the subject rental property, which included photographs of the interior of the subject rental property. Tenant K.S. testified that the address listed on the advertisement is for the other side of the duplex but the photographs of the unit itself show that it is the subject rental property. Tenant K.S. testified that the tape seen on the counter in the kitchen was placed there by herself and testified that the photograph of the blue bedroom is her son’s room which the tenants painted blue.

The tenants entered into evidence screenshots of advertisements for the subject rental property which tenant K.S. testified she took on August 1, 2021. Tenant K.S. testified that when the tenants resided in the subject rental property the basement was unfinished. Tenant K.S. testified that the photographs show that the landlord renovated the basement, and added a kitchen, making the one unit the tenants resided in, into two suites. The screenshots of advertisements evidencing tenant K.S.'s above description were entered into evidence.

The tenants entered into evidence a screenshot of an online advertisement for the subject rental property that tenant S.K. testified she took on August 31, 2021 which states that the subject rental property has been rented.

Counsel submitted that the tenants are entitled to 12 months rent compensation pursuant to section 51 of the *Act*, because instead of the landlord or a close family member of the landlord moving in, the landlords renovated the subject rental property and re-rented the units instead of moving in.

### Analysis

Based on the undisputed testimony of the tenants and the Notice entered into evidence, I find that the tenants received the Notice from the seller of the subject rental property on March 29, 2021 via email. I find that while the reason to end the tenancy was not selected on page 2 of the Notice received on March 29, 2021, it is clear from the April 6, 2021 email from the seller's agent and the Tenant Occupied Property- Buyer's Notice to Seller for Vacant Possession, that the reason the seller ended the tenancy was because:

All 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.

Section 68 of the *Act* states:

**68** (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that



- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice

Section 52 of the *Act* states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

Pursuant to section 68 of the *Act*, I amend the Notice to state the ground for ending the tenancy was:

All 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.

Based on the testimony of the tenants, the April 6, 2021 email from the seller's agent and the Tenant Occupied Property- Buyer's Notice to Seller for Vacant Possession, I find that both parties knew or should have known the information that was omitted from the Notice. I find that in these circumstances, it is reasonable to amend the Notice.

Based on the Tenant Occupied Property- Buyer's Notice to Seller for Vacant Possession, which is signed by H.S.S., I find that the landlord H.S.S. instructed the seller to serve the Notice on the tenants.

Section 51(2) of the *Act* states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

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

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

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

Residential Tenancy Policy Guideline #50 (PG #50) 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) for at least six months. 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....

The tenants alleged that the landlords did not accomplish the purpose for ending the tenancy set out in the Notice. The landlords did not attend this hearing. As stated in PG #50, the burden of proof is on the landlords. The landlords failed to attend this hearing after being duly served with the dispute resolution hearing materials. I find that the landlords have not proved, on a balance of probabilities, that they used the rental unit for its stated purpose within a reasonable time after the tenants were evicted.

I accept the tenants' undisputed testimony that while the address for the other side of the duplex is listed on one of the advertisements, the unit being advertised for rent was the subject rental property.

Based on the tenants' undisputed testimony, and the advertisements and photographs entered into evidence, I find that the landlords renovated the subject rental property after the tenants were evicted and re-rented the units. I find that the landlords did not take steps within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

I find that no extenuating circumstances were presented in the hearing.

Pursuant to section 51(2) of the *Act* and my above findings, the tenants are entitled to a monetary award equivalent to 12 months' rent, in the amount of \$12,152.40.

As the tenants were successful in this application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$12,252.40.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: October 26, 2022

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Residential Tenancy Branch