



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNETC, FFT**

### Introduction

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

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

The tenant DC attended for both tenants (“the tenant”). The landlord attended with the lawyer VS (“the landlord”). The landlord called the landlord’s spouse RS as a witness.

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

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### Issue(s) to be Decided

Is the tenant entitled to the relief requested?

### Background and Evidence

The hearing was scheduled for 1-hour. Considerable evidence was submitted by both parties in the 93-minute hearing. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

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

The tenant claimed compensation of 12 times the rent for the unit they rented (for a total claim of \$21,600.00) as the landlord did not occupy the unit as required under the Act.

The landlord denied the tenant's claim. The landlord stated the unit was occupied by the landlord's mother within a reasonable time after the tenant vacated in compliance with the Act. The landlord requested the application be dismissed.

### *Tenancy Agreement*

The tenant submitted a copy of the tenancy agreement. The parties agreed they had a fixed term tenancy from May 1, 2019 to April 30, 2020, following which the tenancy was to continue on a month-to-month basis. Rent was \$1,800 payable monthly.

### *Two Month Notice*

The parties agreed the landlord issued a Two Month Notice on December 14, 2019.

The grounds for the Notice were:

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

Further to the Notice, the tenant moved out on March 31, 2020. The 6-month period therefore ended September 30, 2020.

### *Summary of Landlord's Position*

The landlord testified that his mother moved into the unit 6 to 8 weeks after the tenant moved out and lives there to this day. In support of his position, the landlord called his spouse RS to provide testimony. He submitted the following:

1. Affidavit of the landlord
2. Affidavit of SB, the mother of the landlord.

The landlord's evidence included different move-in dates from 2 to 8 weeks after the tenant vacated:

1. The landlord's testimony was that his mother moved in within 8 weeks.
2. The landlord's affidavit stated his mother moved in "as soon as the repairs were done" without specifying the time.
3. The affidavit of the landlord's mother states:

Approximately six weeks after the tenants moved out I moved into the suite.

4. The landlord's spouse, the witness RS, testified her mother-in-law first slept in the unit two weeks after the tenant moved out and has slept there every night since with some exceptions; when the repairs were finished, her possessions and furniture were slowly moved in.

The landlord testified that he carried out repairs to the unit, such as fixing baseboards, doors, cleaning the windows, and replacing back splash in the kitchen. The landlord did not submit any receipts in support of purchasing materials nor did he submit photographs or other evidence showing what repairs were done. He testified that because of the pandemic, the work proceeded slowly.

The landlord testified he was unemployed at the time because of the pandemic. He gradually did the work until his mother could sleep in the unit. For some months, the unit had no furniture in the living room. Over time, his mother's possessions and furniture were moved in. As soon as his mother moved into the unit, she used the unit's kitchen which had everything she needed to cook.

The landlord testified his brother IB and his family moved into the second bedroom of the apartment in August 2020. His mother and IB continue to live there to this day.

The landlord acknowledged that he advertised the unit on Airbnb in October 2020. He said the tenant's screenshot of the house on October 19, 2020 indicated 5 reviews and a 4.40 rating did not indicate anyone other than his mother lived in the unit for the 6 months after the tenancy ended.

The landlord denied they rented out the unit before the end of the 6-month period. The landlord testified the reviews were from family and friends who stayed in the unit without paying simply for the purpose of generating good reviews. The landlord acknowledged that subsequently, the unit has been and continues to be rented on Airbnb and his mother stays with relatives when that occurs. However, this happened after the 6-month period.

In her affidavit sworn April 6, 2022, the landlord's mother stated, "We have not rented out the suite to any other people."

#### *Summary of Tenant's Position*

The tenant submitted written argument which included several documents, key among which are the following:

1. Timeline
2. Pictures date stamped April 30, 2020, May 2020 and July 31, 2020
3. Screenshot tenant testified was dated October 19, 2020 from Airbnb showing photos of the unit; the starred rating was 4.40 based on 5 reviews

The tenant took the position that nobody moved into the rental unit after they moved out March 31, 2020. The tenant claimed the landlord's mother has never moved into the suite and it has been used as an Airbnb since shortly after they moved out, and certainly within the 6- month period.

In support of this claim, the tenant referred to the photographs which show a vacant apartment until July 31, 2020. The tenant testified that the living room and front area of

the rental unit has large windows which allowed him to see inside clearly. The unit was untouched and looked the same as when they moved out. The landlord did not submit any photographs showing his mother living in the unit.

The tenant referred to the Airbnb screenshot which he testified he captured on October 19, 2020. As the number of reviews is 5, the tenant testified it was likely in his opinion that the unit was rented for a month or more before October 19, 2020.

### *Landlord's Reply*

The landlord testified as follows. He did not dispute the rental unit was empty for the first two months after the tenant moved out although the landlord's wife testified it was only empty for 2 weeks.

The landlord asserted that the photographs up to the end of July 2020 show an empty apartment as only his mother's bedroom was occupied which is not visible in the pictures.

The unit was not listed on Airbnb before October 1, 2020 and the 5 reviews were from family and friends to enhance the rating; they did not pay for the accommodation.

### Analysis

The parties provided considerable conflicting evidence. Not all asserted facts and arguments are referenced in this Decision. I refer to only selected, key, admissible and relevant evidence upon which my findings are based.

### *Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility.

A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I have carefully reviewed the evidence. I find the tenant's version of events to be most in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find the landlord's evidence to be confusing and contradictory. The landlord submitted no documentary evidence to support his claim that the move-in was delayed because of repairs. While claiming his mother moved in 8 weeks after the tenant moved out and the kitchen was ready for her use, the photographs submitted by the tenant show a vacant unit, including the kitchen. I find it more likely than not, that the landlord's mother did not move into the unit within 4 months or at all. I find the landlord's testimony about the starting date for the Airbnb rental (after the 6-month period) not to have a ring of truth as it was unsupported by any documentary evidence.

I conclude the landlord's testimony is not reliable or credible. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

### *Burden of Proof*

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove any alleged extenuating circumstances. The standard of proof is

on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position.

Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find the landlord has not met the burden of proof. My findings are set out below.

#### *The Act*

The Notice was issued pursuant to section 49(3) of the *Act* which states:

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

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and 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 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 tenant vacated on March 30, 2020 pursuant to the Two Month Notice. Under section 51(2) of the Act, the landlord must prove that his mother moved into the rental unit "within a reasonable period after the effective date of the notice".

RTB Policy Guideline 50 addresses what a reasonable period is and states

(pages 2-3):

### **Reasonable Period**

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can



arise whenever substantive renovations and repairs are undertaken.

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)

Pursuant to the above, a reasonable period after the effective date of the Notice is 15 days or somewhat longer. The dictionary definition of "somewhat" is "to a moderate extent or by a moderate amount". I find Policy Guideline 50 contemplates a reasonable period to be around 15 days and I find it should be no more than 30 days which is twice the amount stated. There would be no reason to set out a 15-day period in Policy Guideline 50 if a reasonable period was in fact twice this amount.

Accepting for the purposes of this Decision that the landlord's mother moved in 8 weeks after the tenant moved out (as the landlord testified), this was two months after the effective date of the Notice. This is well past the 15-day period noted in Policy Guideline 50 and is not "somewhat longer" than 15 days because it is 4 times the period noted.

Even assuming the landlord's mother is correct in saying, as she did in her affidavit, that she moved in 6 weeks after the tenant moved out, this is still longer than 30 days.

I do not accept the witness RS's testimony that her mother-in-law moved in 2 weeks after the hearing. I find this unlikely and unsupported by any other testimony.

I find the tenant's testimony, based on the pictures of the vacant unit 4 months after they moved out, to be credible. I believe it is more likely than not the unit was vacant for 4 months, and certainly much longer than the landlord claimed.

I therefore find the landlord's mother did not move into the rental unit within a reasonable period after the effective date of the Notice.

### *Extenuating Circumstances*

It is open to the landlord to submit that extenuating circumstances prevented his mother from moving into the rental unit within a reasonable period after the effective date of the Notice.

Policy Guideline 50 states as follows about extenuating circumstances:

#### 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 has not submitted compelling evidence to prove extenuating circumstances prevented his mother from moving into the rental unit within a reasonable period after the effective date of the Notice. The only evidence before me about extenuating circumstances is the landlord's testimony, unsupported by any documents, that the unit needed repairs and the work was slowed by the pandemic. I find the description of the repairs to be vague and general. The landlord referred to delays in having these completed due to the pandemic. However, he could not provide details about what repairs and renovations were completed and no supporting documents were submitted.

In relation to the pandemic, the landlord did not provide a compelling link between the pandemic or pandemic guidelines and the delay in the repairs being started or completed. It is unclear based on the evidence provided how the pandemic caused delay in the completion of any repairs when the unit was empty.

As well, extenuating circumstances are meant to cover unanticipated issues or issues which were out of the landlord's control. If a landlord is ending a tenancy for their parent to occupy the rental unit, their parent should attend the rental unit to determine if it suits their needs prior to the landlord issuing a Notice. If the landlord had taken this simple step here, they would have known before the Notice was issued on December 14, 2019, what repairs were necessary and acted accordingly. The vague and unspecific description of the repairs is not a clear explanation for why repairs took several weeks in an empty unit.

Further it is not clear why the landlord's mother was prevented from moving into the rental unit because of the repairs. From the tenant's photographs and testimony, it appeared as though the unit was unchanged from the time the tenant moved out for at least 4 months.

Given the above, the landlord has failed to prove his mother moved into the rental unit within a reasonable period after the effective date of the Notice. Further, the landlord has failed to prove extenuating circumstances prevented his mother from moving into the rental unit within a reasonable period after the effective date of the Notice.

Therefore, I find section 51(2) of the Act applies.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant 12 times the monthly rent which I calculate to be \$21,600.00.

As the tenant is successful in this application, the tenant is entitled to reimbursement of the filing fee of \$100.00 for a total Monetary Order for \$21,700.00.

### Conclusion

The tenant is granted a Monetary Order in the amount of \$21,700.00.

This Monetary Order must be served on the landlord. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC

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 24, 2022

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Residential Tenancy Branch