



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing originally convened on June 13, 2022 but was adjourned to October 13, 2022 due to time constraints. This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended both hearings 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

### Preliminary Issue Service

The tenants testified that the landlord was served with their application for dispute resolution via registered mail on October 28, 2021. The landlord testified that he received the above package in the first week of November 2021 via registered mail. I

find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

The tenants testified that they served the landlord with their evidence by leaving their evidence in the landlord's mailbox on May 26 and May 27, 2022. The landlord testified that he received the above evidence from his mailbox on May 29, 2022. I find that the landlord was served with the tenants' evidence in accordance with section 88 of the *Act*.

The landlord testified that the tenants were served with his evidence via registered mail. The landlord testified that the first registered mail package was mailed in December of 2021 and the second registered mail package was mailed on May 31, 2022. The tenants testified that they received both registered mail packages but could not recall on what dates. I find that the tenants were served with both of the landlord's evidence packages in accordance with section 88 of the *Act*.

### Issues

1. Are the tenants entitled to 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 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background/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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 between the tenants and the previous owner of the subject rental property. The landlord purchased the subject rental property in April of 2021 and served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") in person on April 24, 2021. The Notice was entered into evidence. The Notice is signed and dated by the landlord and states that the tenants must vacate the subject rental property by June 30, 2021 because:

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).

The Notice requires the landlord to select which close family member will occupy the unit. The landlord selected the following two options:

- The landlord or the landlord's spouse, and
- The father or mother of the landlord or landlord's spouse.

Both parties agree that following the service of the Notice, the tenants gave the landlord 10 days' written notice to end the tenancy earlier than the effective date of the Notice. The tenants moved out on May 19, 2021. Both parties agree that rent at the time of the eviction was \$1,500.00 per month and that the subject rental building is a house with an upper and a lower suite and that the tenants resided in the lower suite. Both parties agree that there is an interior staircase connecting the upper and lower suites but that this access was blocked off and tenants from one suite could not access the other tenants' suite.

Both parties agree that on April 24, 2021, the tenants in the upper unit were served with an identical copy of the Notice, but with the appropriate tenant names in place.

The tenants testified that they filed this application for dispute resolution seeking 12 months rent under section 51 of the *Act* because the landlord did not act in good faith when he evicted the tenants. The tenants testified that the landlord indicated on the Notice that his parents were moving in, but to this day, his parents have not moved in. The tenants testified that the landlord currently has tenants living in the upper suite and that their presence shows that he did not act honestly in serving the Notices to the upper and lower suites.

The tenants testified that their previous landlord only sold the subject rental property to the landlord because he agreed to keep the tenants as tenants. The tenants testified that the previous landlord lowered the price by \$75,000.00 in exchange for the tenants being permitted to stay. The tenants entered into evidence an unsigned letter purportedly from the previous landlord which states in part:

We initially agreed to sell our house at a purchase price of \$925,000. [The landlord] agreed to permit our then current tenants (upper and lower) at the time to stay in their rental suites and indicated that he was intending to keep renting out both the upper and lower suites of the house. It was implied that he was purchasing the house as an income property and did not intend to live in it. One of the reasons that we agreed to sell to [the landlord] is that he intended to keep both the upper and lower tenants who had all been very good renters.

After our initial agreement was signed and closures dates were agreed upon, [the landlord], reached us through our realtor [name redacted for privacy]. He indicated that the finances for the house no longer worked and needed to adjust the sale of the house in order to keep the renters in the house. We had some initial discussions with both the upper and lower renters about increasing their rents, voluntarily, so that we could still sell the house at the agreed upon rate. After discussions back and forth with our realtor, [the landlord] and my wife and I, we agreed in the end to sell the house for \$850,000, a decrease of \$75,000 in order to keep the renters in the house.

At no time did [the landlord] indicate that he intended to live in either suite, have family in either suite, or renovate either suite. All his indications were that he intended to keep the renters in the suite and we negotiated the lower purchase price with him in good faith as a result.

If we had known that he intended to evict our current tenants we would not have agreed to a lower purchase price.

The landlord testified that the above letter is not true, and that he never told the previous landlord that he intended on keeping the tenants. The landlord testified that he never met the previous landlord and that all negotiation went through the realtors.

The landlord testified that had the previous landlord agreed to a price reduction in exchange for keeping the tenants, it would be included as a term in the contract of purchase and sale, which it was not. The landlord testified that the sale price was lowered through negotiation, but never was it suggested that the tenants would be permitted to stay. The landlord entered into evidence the signed contract of purchase and sale of the subject rental property. The contract for purchase and sale does not have any terms regarding the retention of the tenants.

The landlord testified that he moved into the subject rental property (the lower suite) a couple of days after the tenants moved out. The landlord testified that when he moved in, the tenants in the upper unit were still residing in the upper unit and did not move out until July 1, 2021.

The landlord entered into evidence an email from the upper tenant dated June 24, 2021 which states:

It's [upper tenant]. I just wanted to let you know that [name redacted for privacy] and I will have two cars here for some of the weekend, so we might need to move some of your decorations and/or the table and chairs out of our parking spots so that both parts will fit.

If we do need to move them, we'll put them either on the gravel by the stairs or around the corner by your front door. If you'd like us to move them somewhere else, please just let me know.

The landlord submitted that this correspondence confirms that he was living in the lower unit in June of 2021.

The landlord testified that from July 1, 2021 onwards he occupied the entire house. The landlord testified that he kept his bedroom in the upper unit and used the upper unit for relaxing and used the lower unit for storage and a workspace. The landlord entered into evidence photographs of the two bedrooms in the lower unit. One is full of person possessions of the landlord, and one contains the landlord's bike, and a desk with a computer on it and cabinetry.

The landlord testified that when he served the Notices, his intention was to unblock the staircase separating the upper and lower suites and to live in the entire house with his parents, which is reflected on both Notices which state that the landlord and the landlord's parents will reside in the house. The landlord testified that at the time the Notices were served, his parents' VISAs had been submitted, but that due to COVID, the VISAs were delayed. The landlord entered into evidence photographs of his parent's VISAs which state that they were issued on July 9, 2021 and expire on April 4, 2026.

The landlord testified that even though his parents received their VISAs, the COVID restrictions made it extremely difficult to travel. The landlord entered into evidence an email dated September 22, 2021 from the government of Canada which states:

**Important information about your approved temporary resident visa or super visa and Canada's travel restrictions due to COVID-19.**

Dear temporary resident (visitor) visa or super visa holder,

While the Government of Canada is gradually easing border measures provided that Canada's COVID-19 epidemiology remains favourable, this is a reminder that restrictions limiting travel to Canada are still in place. **Even if you have a valid temporary resident (visitor) visa or super visa, you may not be able to travel to Canada at this time.** If you are granted entry to Canada and subsequently leave and wish to return, you will need to ensure you remain exempt from the travel restrictions and are eligible to re-enter Canada....

The landlord testified that given the changing travel restrictions due to COVID, he and his parents decided to postpone their arrival while they monitored the government's advice regarding travel. The landlord entered into evidence an email confirmation in his parents' name for a cancelled flight scheduled to depart on August 1, 2021.

The landlord testified that his father had surgery a few months ago and is not yet ready to travel.

The landlord submitted that on December 5 of 2021 he was involved in a bike accident for which he required surgery. The landlord submitted that when he returned home from the hospital, he moved entirely into the lower suite because of his disability to walk to the upper level.

The landlord testified that given his bike accident and the decision to postpone his parents' arrival, he decided to rent out the upper suite for January 2022. The landlord entered into evidence a signed witness statement from the upper tenant which states that the landlord resides in the lower suite and that she is the landlord's tenant in the upper suite and has been since January 2022.

The landlord entered into evidence a signed witness statement from K.H. which states:

My family and I live at [redacted for privacy] the property next to [the landlord's] house at [address of subject rental property].

I purchased our house in May 2021 and we moved in on July 1st, 2021. Since then, I have had a chance to know [the landlord] as my next-door neighbor who has lived there since we moved into our house. More than being neighbors, we're friends. In case of any trips or vacation, we look out for each other's property, putting garbage outside etc. We help each other for grocery and emergency events. For instance, [the landlord] had a bike accident and surgery in December 2021. I picked him up from the Victoria General Hospital as he could not drive. In another case, he was in Costco the other day and picked up a bag of grass seed for me. We're in touch frequently by text or chat almost daily. We also share a security camera installed on [the landlord's] property to surveillance the shared driveway in our subdivision. I am aware that [the landlord] has tenants living in the upper suite since January 2022 and they seem to be good people.

The landlord entered into evidence a signed witness statement from D.H. which states:

My name is [D.H.] currently living at [address redacted for privacy.] During the month of February through August of 2021 I lived with my elderly mother, [D.B.] [neighbouring the subject rental property]. It was during this time that [the landlord] first introduced himself to us as a prospective purchaser of the neighboring property at [the subject rental address]. Shortly thereafter, [the landlord] returned to tell us that he was the successful purchaser of the home at [the subject rental address] and would be moving in once the sale closed towards the end of May 2021. I'm writing this letter to confirm that [the landlord] did in fact move into the said residence even earlier than anticipated. I found [the landlord] to be friendly and inviting and we spent many hours chatting about gardening, etc. I am aware of [the landlord] occupying all the spaces within the home once the existing tenants had moved out. I can confirm that during the time I lived beside [the landlord] no new tenants occupied the potential rental unit(s)...

The landlord entered into evidence a signed witness statement from D.B., D.H.'s mother, which states:

My name is [D.B.]. The owner of [a property neighboring the subject rental property]. I've lived here since 1981.

I can confirm I have known [the landlord] since March 2021. He first knocked on our door in March 2021 and introduced himself as prospective buyer of the next door property, [address of subject rental property]. My daughter [D.H.] opened

the door. He was on his bike and with a cycling jersey and bibs! Very funny and easygoing! He had some questions about the property and the neighborhood from us and the safety of it. He mentioned he might move in and live here when current tenants moved out. Then one day he showed up and informed us he closed the deal and he's the new owner and the new neighbor today forward. Since around mid May 2021 he has moved and lived here and I can confirm that and it's undeniable.

He's such a decent gentleman. We're lucky to have him in our next door property. He's always caring and helpful if needed. We've been more friends than neighbors since he moved in. He always brings me souvenirs when he's back from a trip. He brought me a purse and a pack of Saffron this April from his trip to his home country, Iran. He comes to my house frequently. We sit and talk and have a friendly tea and chat. He surprised us with a bottle of red wine and a pack of chocolates on Christmas eve. Also he wired from his house to the corner of his property and ours and lit out [sic] our house with a laser lighting the whole Christmas season! I'm aware that [the landlord] has rented his upper suite since January 2022. I baked the tenants cookies and brought them to the upper suite's porch and [the landlord] introduced me to them....

The landlord testified that his father had surgery two months ago and is not well enough to travel, though he still intends to bring his parents to Canada in the future.

The landlord entered into evidence a BC Hydro invoice in his name for the subject rental property for the following periods:

- April 24, 2021 to June 23, 2021,
- August 24, 2021 to October 25, 2021, and
- October 26, 2021 to December 22, 2021.

The landlord entered into evidence a "Shaw ValuePlan Agreement" which states:

- Name: [landlord]
- Service Address: BSMT [address of subject rental property]
- Mailing Address: BSMT [address of subject rental property]
- ValuePlan Commitment Period: 24 May 2021 to 23 May 2023

The tenants testified that the landlord has not provided any proof that his parents cannot come to Canada, just a generic email from the government cautioning travelers about potential travel restrictions.



The tenants testified that the photographs of the bedrooms in the subject rental property show that they are mostly empty and that after evicting them, the landlord was required to use the entirety of the unit, not just a portion of it.

The tenants' testified that page 3 of the landlord's 1<sup>st</sup> evidence submission states that the landlord moved into the subject rental property in December 2021, more than six months after they moved out which is not a reasonable period of time.

Page 2 of the landlord's 1<sup>st</sup> evidence submission states:

- ....The upper tenant who lived in the upper unit till July 1<sup>st</sup> can confirm my quick move into the house and start living in the lower suite. I've attached my email conversation with them till July 1<sup>st</sup> showing they wanted me to give them more space for parking as they were preparing for moving out and on other occasions, also an email thread informing them from time to time they had letters in the mail. (Attachment #3)
- I've attached my Shaw internet activation agreement letter dated May 23, 2021, for my house. I registered the service for the lower suite and it's shown on the agreement as to the basement (BSMT) which was activated the same week I moved into the lower suite. (Attachment #4)
- After the upper moved out (July 1<sup>st</sup>, 2021) I lived in the whole house. I gradually turned the lower suite bedrooms to the working areas I needed as the house doesn't have any garage for a workshop. I've attached the pictures of both bedrooms in the lower suite on Nov. 14<sup>th</sup>, 2021 just a week after I received this dispute (The first week of November 2021), and started preparing this response. As photographs show I have used one bedroom as my workshop/storage and the other one as my recreation/study

Page 3 of the landlord's 1<sup>st</sup> evidence submission, served on the tenants in December of 2021 states:

- room. The applicant can easily confirm/recognize these are bedrooms they used to live there and hope they realize they had a false claim. (Attachments #5)
- Since I moved into the house, many of my colleagues, friends and relatives have been here for different times and durations as my guests/helping me from time to

time. All of them can confirm no one else has lived here in my house. I'll have some of them attend the hearing session.

- I have frequently had maintenance issues since August in the lower suite and the local repair company (registered business) has been in the suite a few times since then to fix the problems. I'll have them attend the hearing as well.
- The property is part of subdivision landlord and because my front yard is a rock, the only access to my house is through the private driveway which is shared with two other neighbors in the subdivision. We are close to each other and live like a family. All of my next-door neighbors can confirm my move-in date and starting date of my residence in my house specifically in the lower suite. Also, the fact that I have not rented it. I'll have them with me on the date of hearing to testify and also the fact I haven't rented any part of my house since I've move in and lived there.
- I had a bad bike accident at the beginning of December which caused me to have urgent surgery and since then I've lived in the lower suite full time because of my disability to walk to the upper level. I'm on sick leave from my work because of an accident (which happened on December 5<sup>th</sup>, 2021)....

The tenants testified that the landlord told them his parents would be moving in but had ulterior motives to end the tenancy. The tenants testified that the landlord evicted them to get new tenants in as soon as possible.

The tenants testified that according to the landlord's testimony, the landlord moved into the lower suite in May of 2021 and moved into the upper suite on July 1 of 2021. The tenants testified that the landlord was therefore only in the lower unit for one month and 11 days. The tenants testified that the landlord was not permitted to use the lower suite for whatever purpose he wanted, the tenants testified that because the subject rental house was comprised of two suites, to comply with the Notice and the Act, the landlord had to use the entirety of both suites, not portions of them.

The tenants testified that the evidence shows that the landlords' parents were never going to move in, and that the landlord used them as a pretense to evict the tenants after they refused to sign a Mutual Agreement to End Tenancy. The landlord did not dispute asking the tenants to sign a Mutual Agreement to End Tenancy.

The tenants testified that the landlord has not complied with the reasons to end tenancy because his parents have still not moved in.

### Analysis

Based on the testimony of both parties I find that the tenants were personally served with the Notice on April 24, 2021, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* states that 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.

The tenants made submissions regarding the good faith intention of the landlord when the Notice was issued. The good faith requirement is found in section 49(3) of the *Act* as seen above.

Residential Tenancy Policy Guideline #2A (PG #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. I also note that the letter entered into evidence by the tenants, purportedly from the previous landlord, is not signed. I give little evidentiary weight to an unsigned letter unaccompanied by affirmed testimony.

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 testimony of both parties, I find that the tenancy ended on May 19, 2021. Based on the landlord's testimony, the signed letters from the landlord's neighbours, the Shaw Valueplan Agreement and the email message from the upstairs tenant dated June 24, 2022, I find that the landlord moved into the subject rental property a few days after the tenants moved out.

I find the signed statements from the landlord's neighbours to be very credible as the landlord's neighbours are in a unique position to provide firsthand knowledge of the landlord's living situation. I find the signed letters from the landlord's neighbour to be honest recollections of events.

Based on the landlord's testimony, the signed letters from the landlord's neighbours and the photographs of the bedrooms in the lower unit, I find that after the upstairs tenants moved out on July 1, 2021, the landlord used the downstairs bedrooms for storage, recreation and a workspace and used the upstairs for sleeping and relaxing.

Based on the testimony of the landlord and the signed letters from the landlord's neighbours, I find that the landlord was involved in a bike accident on or around December 5, 2021 and that following this accident, the landlord resided solely in the lower suite. I find that the landlord's 1<sup>st</sup> evidence submission supports the above finding, contrary to the submissions of the tenants.

PG #2A states:

...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....

.... section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused....

.... If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room. A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: Blouin v. Stamp, 2021 BCSC 411)

In *Koyanagi v. Lewis*, 2021 BCSC 2062 (*Koyanagi*) the Honorable Justice found that using a space within a residence for a home office is using it as part of the living space.

The tenants argued that the landlord was not entitled to end both the upstairs and downstairs tenancies and to use both units as part of his living space. I find that pursuant to PG #2A, and *Koyanagi*, the landlord was permitted to use both suites as his living accommodation and that using the lower suite for storage, a workspace and recreation qualifies as using the lower suite for living accommodation.

I find that what PG #2A restricts, is reconfiguring the space, reclaiming one portion of it and re-renting the remainder. I find that this has not happened in this case. I find that no part of the lower suite was ever re-rented, and that the landlord has resided in it since May of 2021.

I accept the landlord's testimony that he purchased the subject rental property for himself and his parents to reside in. I find that the above testimony is corroborated by the landlords' parents VISAs issued on July 9, 2021. I find it highly improbable that the landlords' parent would apply for VISAs to Canada as a ruse for an eviction as the process can be lengthy and difficult.

As I have determined that the landlord moved into the subject rental property and has resided in it since May of 2021, I find that one of the two stated purpose for ending the tenancy (the landlord moving in), was accomplished within a reasonable period after the effective date of Notice and the rental unit was used for that purpose for more than six months, in accordance with sections 51(2)(a) and 51(2)(b) and of the *Act*.

I find that the second stated purpose to end the tenancy, that being that the landlord's parents were going to move into the subject rental property, has not been accomplished.

Section 51(3) of the *Act* states:

(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.

Residential Tenancy Branch Policy Guideline #50 states:

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.

I find that it is common knowledge that the worldwide COVID pandemic has forced many families to make difficult choices and has altered many travels plans. I find that the landlord has proved that the pandemic affected even those with valid visas from travelling as exemplified by the September 22, 2021 email from the government of Canada.

I accept the landlord's testimony that his parents cancelled their flight for August 1, 2021

due to the pandemic and that the pandemic has delayed the landlord's parents from moving in. I find that while it is possible that despite the pandemic the landlord's parents could have moved in, it is reasonable for each family to alter their plans based on the global changes caused by the pandemic and the health risks associated with the pandemic. I find that the changing travel and health challenges arising out of the pandemic were/are out of the control of the landlord. Throughout the hearing I found the landlord's testimony to be forthright and credible, I accept the landlord's testimony that his father has recently had surgery and is not yet fit to travel.

I find that all of the above-described circumstances qualify as extenuating circumstances under section 51(3) of the *Act* and that these extenuating circumstances prevented the landlord's parents from moving in within a reasonable period after the effective date of the Notice.

I find that the landlord complied with one of the reasons (landlord moving in) stated in the Notice to end the tenancy, pursuant to sections 51(2) of the *Act* and that extenuating circumstances prevented the landlord from complying with the second reason stated in the notice (parents moving in). Pursuant to my findings above, I dismiss the tenants' application for dispute resolution without leave to reapply.

### Conclusion

The tenants' 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: October 14, 2022

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Residential Tenancy Branch