



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 a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order of \$16,476 for compensation the equivalent of 12 months of rent based on the landlord not complying with the reason stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 24, 2021 (2 Month Notice) and to recover the cost of the filing fee.

Attending the teleconference hearing were the tenant and the landlords. All parties were affirmed. All parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and/or digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

Both parties confirmed there was no written tenancy agreement, and that the tenancy was formed orally. The tenant could not recall when the tenancy began. The parties agreed that the landlords assumed the tenancy when they purchased the home comprised of both sides of a duplex as of April 1, 2021. Monthly rent was \$1,373 per month and was due on the first day of each month. The rental unit is one side of the duplex.

There is no dispute that the tenant accepted the 2 Month Notice. The tenant confirmed that they had received the required one-month compensation as the tenant was served a 2 Month Notice. The effective vacancy date listed on the 2 Month Notice was August 1, 2021. The parties agreed that the tenant vacated the rental unit on August 8, 2021.

The reason stated on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord 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.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

Summary of landlords' evidence

The landlords stated that they provided the tenants three months of notice versus the required two months. The landlords testified that they "never really ever fully moved in" to the rental unit. The landlords claim they had possession of the rental unit for 6.5 months before it was re-rented on February 15, 2022. The landlords testified that due to the events that transpired since August 2021, they began renovating the rental unit in October 2021. The landlords confirmed they did not make any attempts to make the rental unit their primary address, such as changing their driver's license to the rental unit address.

The landlords stated the following as background information:

- Their home located on HC in Coquitlam (Landlord's Home) is 3700 square feet (SF).
- The Landlord's Home has 4 bedrooms and 4 bathrooms and as part of that SF included a 2-bedroom suite, which they are not renting.
- The rental unit is located in Penticton (Rental Unit) and is between 1,700 to 1,800 SF according to landlord CT (CT). Landlord GT (GT) testified that the rental unit is 2,100 SF and then later testified they were unsure of the size of the rental unit.
- The completion date for the purchase of the duplex in which the Rental Unit makes up one-half, was April 1, 2021.
- The duplex has 2 addresses: XX48 being the rental unit (Rental Unit) and XX46 being the renovated side of the duplex (Renovated Unit).

In addition to the above, the landlords testified that they were living in Coquitlam at the time the 2 Month Notice was issued on April 24, 2021. In June 2021, the landlords confirmed they were considering the purchase of a Franchise in Abbotsford. The Franchise purchase (Business Purchase) was completed in full on January 1, 2022 when the landlords took possession of their Franchise in Abbotsford.

The landlords submitted the following timeline document, which includes additional details and has been reduced in size by modifying the spacing for brevity:

TIMELINE

Attached is a timeline of how events unfolded and took place. If we had known how the last parts of 2021 were going to play out, we would never have asked the tenant to leave, unfortunately none of us have the ability to foresee the future and the following extenuating circumstances made it impossible for us to move to Penticton.

April 24th

- Spoke to tenant mid-month to let them know what we were contemplating taking over the suite and then served two months' notice to end tenancy through registered mail

April 30th

- informed tenant they could have an extra month (three months or longer) to find a place if needed so that they could find a place for their family and gave one month no charge as required by law. Security deposit returned on move

out date through Etransfer. Our intention was to take possession and determine what improvements would be needed prior to moving in. We decided we were going to make a change in our lives and see what opportunities lay ahead of us in Penticton.

Early June

- [REDACTED] was informed that two of his four locations that he managed would be going up for sale and if we were interested in purchasing the business. An opportunity to purchase was always something we hoped for but never had the opportunity. We informed the owners we would be interested and we were told information would follow shortly.

June 24th

- We are given a confidentiality agreement for the sale of business, it is signed and returned and then wait for information.

July 13th

- Received confidentiality package. At this point we didn't know if we could afford this venture. We decided to speak to lending institutions and would decide once we had all the info.

July 15th

- approached Bank of Montreal

July 17th

- approached RBC

Aug 1

- move out date for tenant

August

- reflected on price point and store purchase. (Store financials were looked into). Provincial state of emergency called due to wild fires. August 7th Vernon is put on evacuation and the news stations kept reiterating not to travel to the Okanagan unless it was an emergency. Penticton forest fires the week the tenant moved out impacted our ability to go up and clean and get the place ready for ourselves, there was a no travel advisory for the Okanagan which we felt we had no option but to obey. We wait to see how the fires progress. Provincial state of emergency ended on Sept 21st.

August 15th

- A surprise snap Federal Election is called for Sept 20th by Justin Trudeau as he drops the writ on August 15th, election should have taken place in October 2023. [REDACTED] needs to remain in lower mainland due to a management position with Elections Canada for the Burnaby/South Electoral District with a no travel restriction clause during an event due to long hours working 7 days a week to put together what was needed. Election work does not conclude

after vote on Sept 20th but instead not until ballots and paperwork approved through Ottawa and then packed and shipped back to Ottawa. Furniture pickup was officially my last day in office on Oct 19th, 2021 when Canada Post picked up at 10am. Electoral office was at 4650 Lougheed Highway, Burnaby, BC. With notice a transfer in location is possible under regular circumstances.

September

- We decide that we are going to pursue the purchase of one of the store locations after many discussions with accountant and bank.

Sept 27th

- Letter of intent is drawn up

September 29th

- MLC Canada is made aware of the interest of purchase

Oct 14th

- RBC discussion papers

Oct 19th

- BMO discussion papers

Oct 25th

- We hire CBM lawyers to see if we can put the deal for purchase together. Concerns come up with liability and we are also seeing if we can afford to keep the Penticton property or if we would need to sell it in order to purchase business. Stressful month as we are in limbo as we don't know how anything is going to play out at this point.

October

- In Penticton fixing and renovating home for ourselves realizing there was more to do then originally anticipated. Also working on business proposal and plan for purchase but at this time still unsure if it would happen as there was a lot of back and forth going on.

November

- In and out of Penticton all month renovating, jack hammering floors, painting and prepping for new flooring as well as working out business particulars.

Nov 14th

- Left Penticton after lunch, day of big storm and were unable to return due to road closures on the #5 and the Coquihalla, no way in or out of Penticton.

Nov/Dec

- After listening to the news and seeing the projection for work needed on highways, we hired contractors to finish flooring and baseboards as major arteries into Penticton were broken and were indefinitely closed at that point.

November

- Purchase agreement between ourselves, sellers and MLC Canada is close to an agreement.

Dec 1st

- Purchase agreement for business deal was finalized between vendor and purchaser.

Dec 2nd

- Documents from MLC Canada

Late December

- Purchase of business is finalized and signed; possession date is Jan 1/2022. Hands on in store on January 2nd.

January

- After much contemplation over Christmas, we decided that because of our new business plan, moving to Penticton was not feasible for us at this time and we needed to be close to our new business venture. Stress and money were a key factor in deciding to stay in the lower mainland close to our new business and not renting out the property was no longer an option in order to keep up with our bank payments. We had to either sell the property or rent it. We had always intended to move into the property and were always acting in good faith. At no point were we intending to defraud or deceive the tenant. We waited for our business purchase to go through and finalized before deciding to rent out the property.

January

- Debated and finally posted unit for rent for February 2022

Feb 15th

- rented unit, new tenants moved in Feb 15th 2022

Our decision when taking over the suite was not something we took lightly as we knew we were displacing a family but essentially it had nothing to do with them but instead the decision was for our family. As things which we did not have control over, changed and different events occurred in the last part of 2021 it also changed our direction. With the purchase of the company we were trying to figure out if we could maybe go back and forth between the lower mainland and Penticton, unfortunately, after much discussion we decided it would be too time consuming and expensive, our mortgage payments for the business and home are high and we had no choice but to rent out our home to help with our debt-load. Our lives have had many obstacles and hurdles thrown our way in 2021 and because of these extenuating circumstances it changed our planned course for the next few years or at least our foreseeable future. We assumed the tenant was happy at their new home and had locked into a lease with their new rental and so we did not reach out to them to re-rent. Prior to this we had no ill feelings

towards them and thought we left on a good note and that they were happy. The fires, the election and then the storm that washed out roads postponed our plans but essentially the business purchase is what made us change courses in our original plan and our future plans.

I have attached proof that I was working for Elections Canada with my last paystub being in November 2021, as well I have attached proof of our new business venture with documents from BMO and supporting documents. The fires in August and the highway washouts in November were general news topics in BC and I believe to be general knowledge and am not attaching proof of these events.

[reproduced as written except personal information redacted to protect privacy]

The landlords were asked why they were wanting to move from Coquitlam to Penticton, and they said for “downsizing” purposes and a “little quieter lifestyle”. The landlords testified that they fell in love with Penticton and felt that the opportunities were there such as in trades as the landlord planned to switch back to trades and that their wife could have transferred there through Elections Canada.

In terms of the Business Purchase, the landlords testified that due to it being a franchise, the following:

“there was a lot of things that had to be checked off before we could move to the next step, so every few weeks we had to get approval from the bank, we had to speak to the franchisee to get approval that we could even purchase the company, we had to speak to lawyers and accountants to go over everything.”

[reproduced as stated during the hearing]

The landlords also mentioned a confidentiality agreement that they had to sign as part of the Business Purchase. The landlords confirmed that there was never a discussion with the tenants to rescind the 2 Month Notice when their plans changed as they did not find out about the ability to proceed with the Business Purchase until after June 21, 2021 and that on June 5, 2021, the tenants indicated that they found a new place. The landlords stated that on June 24, 2021, the confidentiality agreement was signed. The landlords stated the 2 Month Notice was issued in good faith.

When asked how many trips the landlords made from their Coquitlam home to Penticton property. The landlords stated that they were originally planning to go up in August 2021

but due to the wildfires and that a Provincial State of Emergency was issued on August 7, 2021 and because one of the landlords works for the Province of BC, they were not about to violate a provincial order. The landlords testified that between mid-October until the flood in November when the road got washed out. The landlords testified that they left Penticton on November 14, 2021, which was the date of the flood.

The landlords confirmed that “over Christmas” of 2021, they eventually made the decision to either rent or sell the duplex including the Rental Unit and the Renovated Unit. On January 16, 2022 the landlords placed the Rental Unit up for rent for \$2,500, and new tenants moved in as of February 15, 2022. The landlords stated that they were given information that they could ask between \$2,800 and \$3,000 per month but that they thought that was too high, so they settled for \$2,500 per month. The landlords stated that the Rental Unit was not rented prior to the new tenant who moved in on February 15, 2022.

GT confirmed that they work for the federal government for Elections Canada and the Prime Minister called a “snap election” on August 15, 2021. The landlord also stated that because they have a management position and that their electoral district they run is in Burnaby, they cannot travel at all and must stay a certain amount of time once an election is called. GT testified that they could not leave Coquitlam or Burnaby until October 19, 2021 until their furniture was shipped back to Ottawa. Landlord CT stated that there were also hints early in early July that an election could be called as GT was asked to rent a space in case of an election being called. The landlords stated the election caught them by surprise as it was not supposed to happen until 2023. Landlord CT stated that they originally wanted to start their renovations on August 1, 2021.

The landlords stated that “the number one issue was the business” and that was the main reason they didn’t move up to Penticton and that the rest was “just all this extra stuff that just kept causing us roadblocks, it was just extra stuff, but our number one reason was the business.” The landlord confirmed that they have never moved from Coquitlam to Penticton due to the business and “extra stuff” mentioned above. The landlords claim they will “one day go to Penticton, but that it has been postponed now.”

The landlords confirmed that the new tenant who moved into the rental unit as of February 15, 2021, remain in the rental unit as of the date of the hearing, which is listed on the cover page of this Decision. In addition, the landlord’s confirmed that the tenant in the Renovated Unit next door was paying \$2,500 per month. The landlords distinguished the Renovated Unit by stating that it was “brand new” and that it was that

way when they bought the duplex in April 2021. The Rental Unit was not renovated when they purchased the duplex in April 2021. The landlords stated that they do not own any other rental properties.

Summary of tenants' evidence

The tenant stated that the landlords never moved in at all. The tenant testified that the landlords buying a business is not the tenants' problem. The tenant stated that they and their children were displaced from their home.

As far as job opportunities in Penticton, the tenants raised the issue that there are far less job opportunities in Penticton compared to the lower mainland. In addition, the tenant stated that they informed property manager Jenna of their move out/my rental on June 15, 2021 and Jenna had no idea that the tenant intended to move. The tenant said if they were given an opportunity to stay where they were, they "obviously would have stayed there."

Regarding the highways, the tenant stated that the highways were not actually closed except for the Coquihalla during the flood times and were advised not to travel but no order was made "not to travel."

The tenant states that when landlords bought the duplex the Renovated Unit was vacant, which the landlords did not dispute by confirming that they entered into a tenancy agreement with another tenant for the Renovated Unit.

The tenant claims that when they met the landlords on April 16, 2021, the tenant was concerned that they might be displaced and that the landlords reassured the tenant that all was okay; however, 8 days later on April 24, 2021, the landlords issued the 2 Month Notice. The landlords did not dispute that conversation.

Rebuttal by landlords

The landlords stated that they did not take the decision lightly as they knew they would be displacing a family and that they "felt terrible about it". The landlords testified that they were never trying to "be hurtful or do anything to hurt...it was just a decision...the better being of our family and it was just something we wanted to and had nothing to do with her."

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I have not considered the “good faith” element mentioned in section 49(3) of the Act as that section of the Act only applies when a tenant disputes a 2 Month Notice. In this matter, the tenant did not dispute the 2 Month Notice and accepted it and the one-month of compensation the landlords that is required once served with a 2 Month Notice. There is no equivalent test of “good faith” in terms of 12 times the monthly rent described below.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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

- (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.**

[emphasis added]

In addition to the above, 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.

[emphasis added]

Firstly, and as confirmed by the landlords during the hearing, the landlords confirmed they did not move into or occupy the rental unit after serving the 2 Month Notice and confirmed their residence remains in Coquitlam. The reason stated on the 2 Month Notice stated that the landlord or the landlord's spouse would occupy the rental unit. Therefore, I find the landlords have provided insufficient evidence that they used the rental unit within a reasonable period after the effective date of the 2 Month Notice, which stated August 1, 2021.

Based on the above, I find the remaining issue before me, is whether the landlords have provided sufficient evidence to support that extenuating circumstances exist that stopped the landlords from using the rental unit within a reasonable period and for at least 6 months from effective date. RTB Policy Guideline 50 – *Compensation for Ending a Tenancy* (Guideline 50) applies and states the following regarding 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.

[emphasis added]

I find Guideline 50 takes a reasonable approach and based on the evidence before me, I find as follows. Firstly, and as stated by the landlords, their main reason for not moving to Penticton was due to the Business Purchase. I find that the landlord made a conscious decision to purchase a Franchise versus complying with the reason stated on the 2 Month Notice. Secondly, and as stated by the landlord, I find that none of the “extra stuff” mentioned above by GT meets the definition of extenuating circumstances as none of the “extra stuff” change the fact that the purchase of the Franchise was the main reason for not moving to Penticton. I find that the landlords changing their mind from occupying the rental unit to instead remaining in the lower mainland due to their Business Purchase **does not meet the definition of extenuating circumstances.**

As a result, I find the landlords breached section 51(2)(a) and section 51(2)(b) of the Act. Section 51(2) of the Act states:

Tenant's compensation: section 49 notice

51(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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.** [emphasis added]

As section 51(2) places the onus of proof on the landlords and considering my finding that the landlords breached sections 51(2)(a) and 51(2)(b) of the Act, **I find the tenant's application is fully successful.**

As a result of the above, I find the tenant is entitled to \$16,476 in compensation from the landlords, comprised of 12 times the monthly rent of \$1,373 pursuant to section 51(2) of the Act. In addition, as the tenant's application was fully successful, I grant the tenant the recovery of the cost of the filing fee in the amount of \$100 pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$16,576** comprised of \$16,476 for 12 times the \$1,373 monthly rent, plus the \$100 filing fee.

Conclusion

The tenants' application is fully successful.

The landlords have not met the burden of proof and have breached the Act as described above.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$16,576 as indicated above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The following website has further information about serving a monetary order, a demand letter and enforcement of a monetary order:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing/serving-and-enforcing-orders>

This Decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlords.

Should the landlords fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2022

Residential Tenancy Branch