



# 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 landlord to reimburse the tenant for the filing fee pursuant to section 72.

HP attended as agent with the landlord (“the landlord”). HP explained he is the son-in-law of the landlord who is not comfortable testifying in English. The tenant attended.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

*Preliminary Issue – Service*

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. I find the landlord was served in compliance with the Act.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The landlord did not submit any documentary evidence. Nevertheless, the landlord provided considerable testimony with which the tenant disagreed. Not all asserted facts and arguments referenced in the 60-minute hearing are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

The tenant filed this Application for Dispute Resolution on March 4, 2022. The tenant claimed he is entitled to compensation of 12 months rent of \$11,500.00 as the landlord's child did not move into the unit as stated in the Two Month Notice.

The landlord testified his son RJ moved into the unit and requested the Application for Dispute Resolution be dismissed. The landlord called his son RJ to provide affirmed testimony that RJ occupied the unit after the tenant moved out.

*Tenancy*

A copy of the tenancy agreement was not submitted. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	2016
Vacancy Date	August 15, 2022
Rent payable on first of month	\$950.00
Security deposit	Returned at end of tenancy

The parties agreed the landlord issued a Two Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") – copy submitted in RTB form
Date of Notice	May 24, 2021
Effective Date of Notice	July 15, 2021 (changed by consent to August 15, 2022)
Date and Method of Service	Tenant acknowledged service
Move out	August 15, 2021
Reasons for Issuance	Occupation by child of the landlord or landlord's spouse

### *Tenant's Claim*

The tenant testified as follows. The unit was a cabin located on an orchard acreage on which other homes were located.

Before he issued the Two Month Notice, the landlord informed him the landlord needed the unit for farm workers. The landlord later informed the tenant his son, RJ, was moving back to the area and needed a place to live.

Since he moved out, the tenant regularly drives for work within viewing distance of the unit. The unit appeared unoccupied and did not have any vehicles parked outside.

The tenant said that he went to the acreage to visit an elderly friend, a previous neighbour. The friend informed the tenant that no one had moved into the unit.

The tenant stated that about four months after he moved out, he went to the unit, looked in the window and observed it was unoccupied.

The tenant testified that for these reasons, the tenant believed no one moved into the unit after he vacated.

The tenant submitted no supporting documentary evidence.

The tenant testified he did not know why the landlord evicted him as no one moved into the unit.

### *Landlord's Claims*

The landlord denied all the tenant's testimony. He stated his son, RP moved into the unit two weeks after the tenant moved out. RP is in his mid-thirties, was

returning to his home area, and needed an independent place to occupy. The landlord denied telling the tenant he needed the unit for workers.

RP was called who provided testimony as follows. RP is the landlord's son. He moved a considerable distance to occupy the unit and the physical relocation took a few weeks. However, he said he moved in by early September 2021 and lived there until he got married in June 2022.

The landlord disputed the tenant's testimony that he could see the unit while driving by. He also denied the tenant's observations that the unit was vacant and there were no vehicles parked there.

The landlord repeatedly accused the tenant of not telling the truth.

### Analysis

The tenant seeks 12 months rent as compensation as well as reimbursement of the filing fee. The landlord requested the application be dismissed.

### *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.

Although the landlord did not provide any documentary supporting evidence, the landlord called his son RJ who provided believable testimony. RJ testified he moved into the unit in early September 2021 and lived there until June 2022.

Because of RJ's testimony, I find the landlord has provided credible testimony that is 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."

For those reasons, I give greater weight to the landlord's evidence.

### *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 met the burden of proof. My findings are set out below.

### *The Act*

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49(4) states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

Section 51 (2) of the Act provides:

(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.

(Underlining added)

*Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy* addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property and a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given.

#### *Landlord's Submissions*

As stated above, I find the landlord's submissions credible as supported by the witness RJ, the landlord's son, who stated he occupied the unit beginning two weeks after the tenant moved out until June 2022. I give the greatest weight to the landlord's evidence.

#### *Summary*

I find the landlord complied with section 51(3) and did use the rental property for the reason stated in the Two Month Notice. I find the landlord has met the onus of proof. I find that the landlord's son RJ did occupy the unit for a six-month duration within a reasonable period after the tenant moved out and lived in the unit for at least 6 months within a reasonable period after the unit was vacant.

I therefore dismiss the tenant's claims without leave to reapply.



Conclusion

The tenant's claims are 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 31, 2022

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Residential Tenancy Branch