



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **FINAL DECISION**

Dispute Codes      MNETC, MNSD, FFT

### Introduction

This hearing dealt with the tenant's application, filed on January 22, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- compensation of \$52,000.00 from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- a monetary order of \$4,800.00 for the return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The "first hearing" occurred on May 2, 2022 and lasted approximately 67 minutes from 1:30 p.m. to 2:37 p.m.

The "second hearing" occurred on October 7, 2022 and lasted approximately 80 minutes from 9:30 a.m. to 10:50 a.m. The landlord unexpectedly disconnected from the second hearing from 10:31 a.m. to 10:32 a.m. I did not discuss any evidence in the absence of the landlord.

The landlord, the landlord's agent, the tenant, and the tenant's agent attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the first hearing, all hearing participants confirmed their names. At the second hearing, all hearing participants confirmed their names and spelling. At both hearings, the landlord's agent and the tenant both provided their email addresses for me to send copies of my decisions to them after the hearings.

At the first hearing, the landlord stated that she owns the rental unit and confirmed the rental unit address. At both hearings, the landlord confirmed that her son, who is her agent, had permission to speak on her behalf.

At both hearings, the tenant confirmed that her son, who is her agent, had permission to speak on her behalf.

At both hearings, the landlord's agent and the tenant identified themselves as the primary speakers.

At the first hearing and in my interim decision, I notified both parties that no witnesses were permitted to testify at the second hearing, except for the tenant's downstairs witness AM, if the tenant required and arranged for same. At the second hearing, the tenant affirmed that she did not want to call witness AM to testify.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of both hearings, all hearing participants separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing process to both parties, and they had an opportunity to ask questions, which I answered. At the first hearing, I notified both parties that I could not act as their agent or advocate. At the second hearing, I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests at both hearings. Both parties confirmed that they were ready to proceed with both hearings.

#### Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on May 2, 2022, was adjourned for a continuation after 67 minutes because it did not finish within the 60-minute hearing time and both parties had further submissions to make. By way of my interim decision, dated May 2, 2022, I adjourned the tenant's application to the second hearing date of October 7, 2022. During the second hearing, both parties confirmed their understanding of same.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information,

from the RTB. At the second hearing, both parties confirmed receipt of my interim decision and the notice of reconvened hearing.

At the first hearing and as per my interim decision, the landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. As per my interim decision, I found that, in accordance with sections 88, 89 and 90 of the *Act*, the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence. During the second hearing, both parties confirmed their understanding of same.

At the first hearing and in my interim decision, I informed both parties that I had jurisdiction under the *Act* and the Residential Tenancy Policy Guidelines, to hear the tenant's application, which exceeds the small claims monetary limit of \$35,000.00, since the tenant's claim for 12 months' rent compensation of \$48,000.00 relates to a notice to end tenancy for landlord's use of property under section 51 of the *Act*. In my interim decision, I noted that the above amount was exempt from the monetary limit of \$35,000.00, as per Residential Tenancy Policy Guideline 27. During the second hearing, both parties confirmed their understanding of same.

At the first hearing and in my interim decision, I informed both parties that they were directed not to serve any further evidence regarding this application, prior to the second hearing. I informed them that neither party was permitted to file any new applications after the first hearing date of May 2, 2022, to be joined and heard together with the tenant's application, at the second hearing. I informed the tenant that she was not permitted to serve her evidence, which was uploaded to the RTB website on April 17, 21, 27 and May 2, to the landlord, prior to the reconvened hearing. I notified her that she had ample time to serve this evidence prior to the first hearing and failed to do so, since her application was filed on January 22, 2022, and the first hearing occurred on May 2, 2022, over 3 months later. The tenant also claimed that the above evidence was irrelevant to her application. During the second hearing, both parties confirmed their understanding of same.

At the second hearing, the tenant confirmed receipt of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 20, 2021 ("2 Month Notice"), on April 21, 2021, by way of email and receiving a copy in the mailbox. The landlord's agent confirmed the above date and service method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on April 21, 2021.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to a monetary order for the return of double the amount of her security deposit?

Is the tenant entitled to recover the filing fee paid for this application?

### Background and Evidence

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

Both parties agreed to the following facts at the first hearing. This tenancy began on January 12, 2018 and ended on July 1, 2021. Both parties signed a written tenancy agreement. Monthly rent of \$4,000.00 was payable on the first day of each month. A security deposit of \$2,400.00 was paid by the tenant to a property management company. A move-in condition inspection report was completed by the tenant and a property management company, not the landlord present.

Both parties agreed to the following facts at the second hearing. The tenant did not provide the landlord with written permission to keep any amount from her security deposit. The landlord did not file an application to retain any amount from the tenant's security deposit. The tenant provided the landlord with a written forwarding address letter on August 13, 2021, by way of registered mail. The landlord did not provide the tenant with an RTB approved form notice of a final opportunity to conduct a move-out condition inspection.

The tenant stated the following facts at the second hearing. She seeks the return of double the amount of her security deposit of \$2,400.00, totaling \$4,800.00. She seeks one-month free rent compensation of \$4,000.00, under section 51 of the *Act*, pursuant to the 2 Month Notice. She seeks compensation under section 51 of the *Act* for twelve months' rent compensation of \$4,000.00, totalling \$48,000.00, pursuant to the 2 Month Notice. The landlord did not use the rental unit for the purpose on the 2 Month Notice, so the tenant is entitled to compensation.

Security Deposit

The tenant testified regarding the following facts at the first hearing. She paid a security deposit of \$2,400.00 for the upper part of the house. Another family paid a \$500.00 security deposit to the landlord for the basement of the same house, under a separate agreement because their rent was \$1,000.00 per month. The landlord returned the \$500.00 deposit to the other family in September 2019. The tenant was initially renting the whole house and then she decided to return the basement only and stay in the upper portion of the house. The tenant was told by the landlord's property manager to give the security deposit to him of \$2,400.00. The tenant found the landlord's rental advertisement online for the rental unit and it advertised a property manager for the landlord. The property manager completed the move-in condition inspection and report with the tenant and collected the tenant's security deposit and half a month's rent for January 2018. The tenant provided two cheques in the landlord's property management company name for the security deposit and half month's rent and provided copies of same for this hearing. The two cheques are dated January 12, 2018. A copy of the online rental advertisement was not provided by the tenant to the landlord. The tenant signed the tenancy agreement with the landlord on January 8, 2018, not a property manager or company. The tenant's rent cheques were in the name of the landlord from February 2018 forward. The tenant did not confirm any information with the landlord regarding whether she had a property manager or company acting on her behalf. The property management company told the tenant that their compensation was one month's rent for January 2018. The tenant only paid \$2,880.00 to the property manager and no other amount to the landlord. The tenant moved out of the rental unit on July 1, 2021. The landlord provided a notice of an intent to sell and transfer the lease and security deposit to the new owner, unless the tenant terminated the tenancy.

The landlord's agent testified regarding the following facts at the first hearing. The tenant paid a \$2,400.00 security deposit to a property manager, who said they would keep it, just in case. The landlord did not post a rental advertisement online for the rental unit. The landlord never collected a security deposit from the tenant because the property manager said they would keep it. The landlord cannot return double the amount of the security deposit to the tenant because she does not have it. The landlord got half a month's rent for January 2018 of \$5,800.00 from the tenant. The tenant's property manager got January 2018 rent of \$2,880.00. The landlord only received a security deposit from the basement tenant under a separate tenancy. The landlord provided a notice of intent to sell and return the security deposit to the basement tenant. The landlord assumes that the tenant's property manager will return the security deposit

to her. Only the tenant and her two property managers were there doing the move-in condition inspection and the landlord did not get a copy of the report, as she was not present.

The landlord's agent stated the following facts at the second hearing. A photo of the tenant's security deposit cheque was provided and says it was paid to a property management company. The landlord never cashed the tenant's cheque, and it is still with the property manager. The landlord never received a security deposit from the tenant, so she cannot give it back to her. The tenant caused damages to the rental unit, as per the landlord's email screenshot, and the tenant agreed that she caused damages during her tenancy, so it is more than the security deposit amount, in any event. The landlord does not agree to pay the tenant for her security deposit. The landlord's agent did not sign the move-out condition inspection report and neither did the tenant, because she disagreed with it. The landlord sent photographs to the tenant, and she disagreed with them. The landlord provided two opportunities for a move-out condition inspection to the tenant. The landlord's agent talked to the tenant on the phone and asked her to come around July 15, 2021, and the tenant refused. The landlord's agent filled out a move-out condition inspection report on his own. He did not tell the tenant he was doing a move-out inspection or report at the time it was being done. The move-in condition inspection report is with the tenant's property manager, and it was never given to the landlord.

The tenant stated the following facts at the second hearing. She was not given two opportunities to complete a move-out condition inspection with the landlord, with one using the RTB approved form. She did not attend a move-out condition inspection with the landlord's agent and she did not receive a call from him to complete an inspection on July 15, 2021. She did not sign a move-out condition inspection report. She told the landlord's agent that she was available to do a move-out condition inspection twice on July 1, 2021, and she texted him and waited, but he did not show up. The landlord's agent emailed her on July 12, 2021, and said that he wanted to do a move-out condition inspection on July 13, 2021 at 7:30, so the tenant waited until 8:30, but the landlord's agent did not show up.

### 1 Month Rent Compensation

Both parties agreed to the following facts at the second hearing. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is July 1, 2021. The reason indicated on the 2 Month Notice was:

- *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 family member will occupy the unit.*
  - *The landlord or the landlord's spouse.*

The tenant stated the following facts at the second hearing. She seeks one-month rent compensation of \$4,000.00 from the landlord. She paid the last two months of rent for May and June 2021, by cheques to the landlord, which were both cashed by the landlord. The tenant received the 2 Month Notice from the landlord and moved out because of it on July 1, 2021. The tenant wants the return of her last month's rent cheque of \$4,000.00 for June 2021, from the landlord. The landlord's agent emailed the tenant on July 1, 2021, saying it was her last day, he wanted the keys back, and she was moving out. The tenant gave notice to the landlord on June 12, 2021, that she was moving out on July 1, 2021, because the 2 Month Notice said that the tenant has to give 10 days notice to move out to the landlord.

The landlord's agent stated the following facts at the second hearing. The landlord disputes the tenant's application for one-month rent compensation of \$4,000.00. The landlord's agent agrees that it says on the third page of the 2 Month Notice, that the landlord is required to provide one-month free rent to the tenant. He did not read this paragraph before and he is new to this procedure, so he was not aware of this. The tenant provided notice on June 12, 2021, that she was moving out by July 1, 2021. The tenant was not required to provide 10 days notice to move out because she did not move out early, as indicated on the notice. The tenant was complaining about the high rent at the beginning of the tenancy, so she wanted to move out anyway, in order to pay cheaper rent. The tenant's rent was reduced to \$4,000.00 by the landlord. The tenant was told that she could stay for a couple of months longer after July 1, 2021, because the landlord's family plans changed. The 2 Month Notice was initiated by the landlord. The tenant should have asked for the one-month rent compensation from the landlord or she should have withheld her last month's rent from the landlord, as indicated on the 2 Month Notice.

### 12 Months Rent Compensation

The tenant stated the following facts at the second hearing. She seeks 12 months rent compensation of \$4,000.00 per month, totalling \$48,000.00, from the landlord. She received a 2 Month Notice from the landlord to move out by July 1, 2021, and she moved out because of it. On the 2 Month Notice, the landlord said that she wanted to

live in the rental unit. However, the landlord put the house up for sale on July 8 or 9, 2021, on different websites. This was done one week after the tenant moved out. The landlord showed the house on August 20, 2021 and sold it shortly after. The landlord did not live in the house after the tenant moved out. There was a sign in front of the house saying it was "for sale." The landlord did not use the rental unit for the reason on the 2 Month Notice, so she owes compensation to the tenant.

The landlord's agent stated the following facts at the second hearing. The landlord disputes the tenant's application for 12 months' rent compensation of \$48,000.00. The landlord gave the 2 Month Notice to the tenant in good faith. Unfortunate events happened in the landlord's family, due to health issues. The landlord's agent's grandfather was hospitalized overseas from May until August 2021, and he passed away on August 15, 2021, due to covid-19. The landlord's agent's grandmother was hospitalized overseas but survived. On May 20, 2021, the landlord's agent's uncle's wife passed away overseas, due to covid-19. The landlord's agent's grandparents, uncle, uncle's wife, and their three kids were all living at the same property overseas and caught covid-19. The landlord and her spouse had to take care of their above family members overseas, due to their illnesses, so they could not come back to Canada and live in the rental unit themselves. The tenant knew the landlord's intention was to sell the property and it was not a "secret." The rental unit was sold three months later in September 2021. The landlord did not issue a 2 Month Notice for sale of the rental unit because that is only if the property is sold, and the new purchaser wants to move into the rental unit. The landlord provided a copy of her return airplane ticket to Canada. On March 16, 2021, the landlord provided a notice to the tenant through email, stating that she wanted to sell the property. This was due to financial issues. The landlord then decided to live at the rental property. In April 2021, the landlord issued the 2 Month Notice to the tenant, to move into the rental unit. The rental unit was empty for three months. The health conditions and deaths were out of the landlord's control. The landlord was overseas from November 2020 to June 2022. The landlord did not have proper financial resources to come back to Canada and had to remain overseas to deal with the family funerals and health issues. The landlord provided copies of the death certificates and hospital reports as evidence for this application.

The tenant stated the following facts in response at the second hearing. There is no relation between the landlord's family health issues and the sale of the rental unit. The rental unit was up for sale while the tenant was living there. The landlord had open houses for the rental unit on July 9, 2021, after the tenant moved out.



The landlord's agent stated the following facts in response at the second hearing. The tenant knew about the landlord's family health issues before she moved out. The landlord's agent told the tenant that the landlord and her spouse could not come on July 1, 2021, to live at the rental unit. The tenant still decided to move out. The tenant had the option to stay but left because she wanted cheaper rent elsewhere. The landlord needed the money from the sale of the rental unit, to pay for the funerals. The mortgage for the rental unit was not cheap. The landlord could not leave the rental unit empty, due to financial reasons, so she sold the property to pay for her debts.

### Analysis

#### Burden of Proof

The tenant, as the applicant, is required to present her application and evidence. The tenant was provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), when she filed her application and after the first hearing was adjourned.

The NODRP contains the phone number and access code to call into both hearings, and states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

Both hearings lasted 147 minutes total, so both parties had ample time and multiple opportunities to present their submissions, evidence, and responses. During both hearings, I repeatedly asked both parties if they had any other submissions and evidence to present, regarding the tenant's application and in response to the submissions of the other party.

*Security Deposit*

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I dismiss the tenant's application for a monetary order for the return of double the amount of the security deposit of \$2,400.00, totalling \$4,800.00, without leave to reapply.

I find that the tenant failed to provide sufficient evidence that she provided a security deposit of \$2,400.00 to the landlord named in this application, who is the owner of the rental unit. The tenant agreed that she provided a security deposit of \$2,400.00 to a

property management company, as per a copy of the cheque, provided as evidence by the tenant.

I find that the landlord did not cash the tenant's cheque for the security deposit of \$2,400.00, as the cheque was in a property management company name, not the landlord's personal name. I find that the landlord did not receive the security deposit from the property management company, as it was not provided to her by them.

I find that the tenant failed to provide sufficient testimonial or documentary evidence that the property management company was acting on behalf of the landlord as an agent. The landlord denied same, claiming that the company was acting as an agent for the tenant, not the landlord. The tenant claimed that the company was advertised online in a rental advertisement, but she did not provide a copy of same to the landlord. The landlord's agent provided affirmed testimony that the landlord did not post an online rental advertisement for the rental unit.

The landlord's personal name and signature were indicated on the tenancy agreement that the tenant signed on January 8, 2021, as per the copy provided for this hearing. No landlord agent, property manager, or property management company appears anywhere on the tenancy agreement. The tenant agreed that only the landlord's name appears on the tenancy agreement. The tenant agreed that she did not confirm information with the landlord, prior to providing the security deposit to the property management company.

Therefore, I find that the landlord cannot return the tenant's security deposit or double the amount of same, because it was not provided to the landlord but rather a property management company, that was not authorized to act as an agent for the landlord.

### 1 Month Rent Compensation

Section 51 of the *Act* entitles a tenant to one month's free rent compensation, pursuant to a 2 Month Notice. It states in part:

*Tenant's compensation: section 49 notice*

*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.*

Both parties agreed that this tenancy ended on July 1, 2021. It is undisputed that the tenant received a 2 Month Notice from the landlord. It is undisputed that the tenant paid rent of \$4,000.00 to the landlord for the last month of tenancy in June 2021, and it was not returned by the landlord. It is also undisputed that the landlord did not provide the tenant with one month's free rent compensation, pursuant section 51 of the *Act* and the 2 Month Notice.

I do not accept the landlord's assertion that the tenant moved out of the rental unit on July 1, 2021, because she was planning to move out in any event, to find cheaper rent at a different location. I find that the tenant vacated the rental unit on the effective date indicated in the 2 Month Notice of July 1, 2021.

Even if the tenant was looking for cheaper rent since the beginning of this tenancy, as alleged by the landlord, she did not move out until after she received the 2 Month Notice from the landlord, asking her to vacate on the effective date of July 1, 2021.

Although the tenant provided notice to the landlord on June 12, 2021, to move out by July 1, 2021, I do not find this to be sufficient one month's notice pursuant to section 45(1) of the *Act*, to move out of the rental unit on the tenant's own accord. I find that the tenant may have misunderstood the information on the 2 Month Notice, asking her to provide at least 10 days' written notice to vacate earlier than the effective date on the notice of July 1, 2021.

Accordingly, I find that the tenant vacated the rental unit pursuant to the 2 Month Notice and she is entitled to one month's rent compensation of \$4,000.00, as per section 51 of the *Act*. The tenant is provided with a monetary order for same against the landlord.

### 12 Months Rent Compensation

Section 49(3) of the *Act* states the following:

*(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(2) of the Act establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

*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.*

It is undisputed that the tenant vacated the rental unit on July 1, 2021. As noted above, I found that the tenant vacated pursuant to the 2 Month Notice. It is undisputed that the landlord issued the 2 Month Notice to the tenant for the landlord and spouse to occupy the rental unit after the tenant moved out. It is undisputed that the landlord and spouse qualify as close family members, who are entitled to occupy the rental unit, pursuant to the 2 Month Notice.

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

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

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

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

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

*E. EXTENUATING CIRCUMSTANCES*

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

*E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE*

*Residential Tenancy Act*

*A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*
- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.*

*Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

I am required to consider the above section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing.

On a balance of probabilities and for the reasons stated below, I find that the landlord met her onus of proof and provided sufficient evidence that extenuating circumstances prevented her from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice.

I accept the affirmed testimony of the landlord's agent at both hearings. I find that the landlord provided sufficient documentary evidence for this hearing, including death certificates, funeral announcements, hospital records, and airplane tickets. The tenant did not dispute the authenticity or contents of the above documents during this hearing.

I find that the landlord's family deaths and health issues were unforeseen events that could not have been predicted or controlled by the landlord. I find that the landlord and her spouse only intended to occupy the rental unit, if they returned from overseas but they could not do so, due to caring for sick family members and two family deaths and funerals.

I find that the landlord could not have known at the time that she issued the 2 Month Notice to the tenant in April 2021, that unforeseen events would occur from May to August 2021, including two covid-19 family deaths during an ongoing worldwide pandemic that is unpredictable and constantly changing. The covid-19 pandemic cannot be controlled by anyone and has had several resurgent "waves" and changing restrictions and requirements imposed by governments in different countries around the world since March 2020.

I find that the landlord's action of selling the rental unit was reasonable, given the extenuating circumstances, after the tenant moved out. I find that the landlord was attempting to mitigate her financial losses, as she was no longer receiving rent from the tenant after she moved out and she had to sell the rental unit to avoid financial problems, as per the affirmed testimony of the landlord's agent. I find that although the landlord initially intended to sell the rental unit, as per the email notice to the tenant in March 2021, her plans changed in April 2021 and she decided to move into the rental unit instead, as per the affirmed testimony of the landlord's agent.

I find that the tenant provided insufficient evidence that the landlord knew that the above events would occur when she issued the 2 Month Notice to the tenant and that these issues were predictable during the ongoing covid-19 worldwide pandemic.

On a balance of probabilities and for the reasons stated above, I find that the tenant is not entitled to twelve times the monthly rent of \$4,000.00, totalling \$48,000.00, from the landlord. Accordingly, this claim is dismissed without leave to reapply.

As the tenant was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$4,000.00, against the landlord. The landlord must be served with a copy of this Order. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application 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 11, 2022

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Residential Tenancy Branch