



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNETC, FFT**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 21, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use of the Property; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agents C.C. and H.H. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that they served the Notice of Hearing to the Landlord, however, did not serve a copy of their documentary evidence to the Landlord. The Landlord's Agents confirmed receipt of the Notice of Hearing. The Tenant confirmed receipt of the Landlord's documentary evidence. As such, I find the above-mentioned documents were sufficiently served pursuant to the Act.

### **Preliminary Matters**

#### **2.5 Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

### **3.11 Unreasonable delay**

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

As the Tenant did not serve a copy of their evidence to the Landlord, I find that by considering the Tenant's evidence in this decision would prejudice the Landlord given they have not has an opportunity to review, consider, or respond to the evidence. As such, the Tenant's evidence will not be considered. Only the Tenant's oral testimony will be considered in this decision.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2019. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$2,000.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which has since been returned to the Tenant. The tenancy ended on January 31, 2022 in compliance with the Two Month Notice to End Tenancy for Landlord's Use dated August 16, 2021 (the "Two Month Notice").

The parties testified and agreed that the Landlord served the Tenant with the Two Month Notice as the Landlord intended to occupy the rental unit. The Tenant had applied to cancel the Two Month Notice, however, vacated the rental unit prior to the hearing, in compliance with the Two Month Notice.

The Tenant stated that shortly after he vacated the rental unit, the Tenant saw the rental unit listed for sale. The Tenant stated that the rental unit sold soon thereafter, and the Landlord never moved into the rental unit as intended.

The Landlord's Agents stated that the Landlord has intended on moving from out of Country to occupy the rental unit, however, on October 15, 2021, the Landlord was in the process of booking their flight, at which point they found that they would not be permitted to travel due to Covid-19 restrictions. The Landlord provided some general information regarding travel requirements in support.

The Landlord's Agents stated that they emailed the Tenant on October 15, 2021 to notify the Tenant that the Landlord would be unable to travel, therefore, the Landlord was withdrawing the Two Month Notice. The Landlord provided a copy of the email sent to the Tenant in support. The Tenant stated that he did not receive the email from the Landlord as he does not regularly check his email.

The Landlord's Agents confirmed that the Landlord did not occupy the rental unit before it sold in February 2022. As such, the Tenant is claiming for compensation equivalent to twelve times the amount of rent.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive,

regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 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. 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 dishonest motive.

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

According to the Residential Policy Guideline 11 (C) WITHDRAWAL OF NOTICE TO END TENANCY: A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

The Tenant is claiming compensation in the amount of \$24,000.00 which represents twelve months of rent as the Landlord did not accomplish the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

In this case, I accept that the parties agreed that the Landlord did not occupy the rental unit, which was the stated purpose of the Two Month Notice. Instead the rental unit sold.

The Landlord's Agents brought up two issues; the first being that the Landlord sent an email stating that the Two Month Notice was withdrawn on October 15, 2021. The Tenant stated that they did not receive the email before vacating the rental unit. According to Policy Guideline 11, the Landlord cannot unilaterally withdraw the Two Month Notice. The Landlord would have needed the express or implied consent of the Tenant prior to the Two Month Notice being withdrawn. As the Tenant stated that he did not receive the email, and the Landlord has provided no evidence that the Tenant consented to withdrawing the Two Month Notice, I find that the Two Moth Notice is still valid.

The second issue brought forward by the Landlord's Agents was that the Landlord was unable to travel due to Covid-19 travel restrictions. I find that the Landlord has provided insufficient evidence to demonstrate that at the time of the Tenant vacating the rental unit on January 31, 2022, the Landlord was unable to travel due to an extenuating circumstance. Furthermore, I find that the Landlord sold the rental in February 2022, therefore, changing their mind regarding occupying the rental unit.

I find that the Landlord has not accomplished the stated purpose of the Two Month Notice pursuant to Section 49 of the *Act*. Based on the above I find that the Tenant is entitled to **\$24,000.00** (\$2,000.00 Rent x 12months) in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$24,100.00.

### Conclusion

The Landlord has not accomplished the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$24,100.00.

The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. 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.

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: November 9, 2022

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Residential Tenancy Branch