



# 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 tenants (“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.

Both parties attended and 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.

The tenant acknowledged receipt of the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

This is an application by the tenant for compensation of 12 months' rent as the landlord did not occupy the unit as stated in the Two Month Notice. In reply, the landlord stated his mother moved into the unit shortly after the tenant moved out and lives there currently. The landlord requested the tenant's claim be dismissed.

The parties provided considerable conflicting testimony. Not all these asserted facts and arguments are reproduced in this Decision. I refer to only selected, key, admissible evidence upon which my findings are based.

*Tenancy*

A copy of the tenancy agreement was submitted. The rental unit is a basement suite in the landlord's home. The landlord and family live upstairs.

The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term tenancy
Beginning Date	Aug 1, 2020
Fixed Term End Date	July 31, 2021, then month-to-month
Vacancy Date	Aug 31, 2021
Rent payable on first of month	\$1,800.00,
Security deposit	\$900.00

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

<b>INFORMATION</b>	<b>DETAILS</b>
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	June 29, 2021
Effective Date of Notice	August 31, 2021
Date and Method of Service	Posted to door on June 29, 2021
Effective Date of Service	July 2, 2021
Reasons for Issuance	Rental unit will be occupied by the landlord's close family member - the mother of the landlord
Application for Dispute Resolution filed - date	March 9, 2022

### *Landlord's Claims*

The landlord testified as follows.

The landlord stated that they purchased the home in April 2021. They gave the tenant the Two Month Notice on July 2, 2021, which stated their mother would occupy the unit.

After serving the Notice, the landlord learned that the unit was illegal, and their plumber had reported the unit to the City as being non-complaint with bylaws. A City inspection was scheduled for September 1, 2021.

The tenant moved out of the unit on August 31, 2022.

At the inspection with the City on September 1, 2021, the landlord decided to decommission the unit as proper conversion to a suite was beyond their financial means.

To decommission the unit, the landlord took all necessary steps to remove elements of the unit that characterized it as a suite. Renovations took place to return the building to a single-family home including removal of a wall panel which had blocked the original stairs connecting the suite with the upstairs. The kitchen was dismantled. The door from the interior of the garage to the suite as used by the tenant was blocked off. The living area was converted to a rec room for the family.

The landlord's mother moved in on September 17, 2022. She still lives in the unit.

The landlord asserted he had complied with the Act.

In support of his testimony the landlord submitted the following:

1. Written submissions dated September 27, 2022
2. An MP4 video of the house dated October 7, 2021, showing a "walkthrough" with the City inspector displaying the renovations and incorporation of the unit into one residence; the Inspector stated in the video that no secondary suite was evident at this address
3. Emails from Inspector dated October 7, 2021, and March 23, 2022 stating the unit was decommissioned as indicated by their inspection on October 7, 2021
4. Copies of utility bills showing one account for the building, instead of two
5. Copies of Drivers Licences for the landlord and his mother showing the same address
6. Copies of Insurance information showing the landlord as the owner of building as their primary residence.

### *Tenant's Claim*

The tenant submitted the following description of their claim in the Application:

We were evicted from our home, the landlords said it was for his elderly parents.

We did not dispute right away, but after we witnessed the renovations first hand and did not see there parents living there we knew we were "renovicted".

We also saw that there were new tennants and were told by the original lands lords that they saw the suite for rent at a higher price.

we are searching for compensation for a years worth of rent and the extra expense of a storage locker for our belonging.

The tenant testified as follows. The landlord did not inform the tenant that any renovations were scheduled to the rental unit after they moved out. Planned renovations are not referenced as a reason for the eviction in the Two Month Notice. The tenant believed the renovations were carried out so the unit could be rented as a higher price.

The tenant saw unknown people entering the garage which used to have the entrance to the rental unit. They submitted the photographs and claimed the people were the new tenants.

### *Landlord's Reply*

The landlord testified that the photographs submitted by the tenant were of visiting family members. They denied they were tenants.

The landlord stated the renovations necessary for the decommissioning of the unit were not mentioned in the Notice because the landlord only learned of the

necessity on October 1, 2022, during the meeting with the Inspector, after the tenant moved out.

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

### Analysis

#### *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.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony supported by well-organized and complete documentary evidence. The testimony was supported in all material aspects by documentary evidence.

I therefore give the landlord's evidence the greatest weight in reaching my Decision.

### *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.

### *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.

### *Findings*

As stated above, I find the landlord's submissions credible as supported by documentary evidence.

Considering the testimony, evidence and Act, I find the landlord has met the onus of proof. I find the landlord took steps, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy, that is, to have their mother move in. I find the landlord complied with section 51(3).

I find the landlord learned after the tenant moved out that they were required to carry out changes to the unit to comply with the City's directions regarding illegal suites. I find they completed the work within a reasonable time and the landlord's mother then moved in, 17 days after the tenant moved out, and continues to live there.



I acknowledge that the tenant disagreed with portions of the landlord's evidence and questioned why the landlord did not inform them of the renovations which took place between September 1 and 17, 2021, when his mother moved into the suite. The tenant inferred they had been misled.

However, I do not find the tenant's submissions to be persuasive. I accept the landlord's credible testimony that he learned on September 1, 2021, after the tenant moved out, that he had no choice but to decommission the unit. I find the landlord carried out the work in a timely and efficient manner.

I find the suggestion that the landlord is untruthful or misled the tenant to be unsupported by the evidence.

In view of my findings, 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: November 03, 2022

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Residential Tenancy Branch