



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated March 24, 2021 ("Two Month Notice"), and to recover their \$100.00 Application filing fee.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing, the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlord with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on March 19, 2022. The Tenants provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenants provided their email address in the Application and they confirmed it in the hearing, but they did not have an email address for the Landlord. The Tenants confirmed their understanding that the Decision would be emailed to them and mailed to the Landlord, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Tenants that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Tenants confirmed in the hearing that the periodic tenancy began in the Fall of 2019, with a monthly rent of \$1,650.00, due on the first day of each month. They said they paid the Landlord a security deposit of \$825.00, and no pet damage deposit. The Tenants confirmed that the Landlord had already returned their security deposit in full.

The Tenants submitted a copy of the Two Month Notice, and confirmed the following details in the hearing. The Two Month Notice was signed and dated March 24, 2021, and it has the rental unit address. The Two Month Notice was served by leaving a copy in the rental unit mail slot on or about March 24, 2021, with an effective vacancy date of May 31, 2021. The Notice and it was served on the grounds that 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.

I asked the Tenants what they seek from their Application, and they said:

If Landlord is found to have fraudulently evicted someone – we are entitled to compensation of up to a year's rent. This house is clearly not being used for his own use. It's being developed.

...

I asked the Tenants how they know that the purchaser did not move into the residential property, and they said: "It was torn down and being redeveloped. We have pictures we sent, with images of it being torn down. His development company sign is there."

The Tenants submitted photographs taken of what they said was the residential property, which shows the property with a wooden frame in front, which has the developer's – the Landlord's name and contact information – and the hours of work. Another photograph shows a pile of broken drywall on the ground in front of the house.

The Tenants also confirmed that no one moved into the residential property before it was torn down. They said: "I checked. The house was not habitable."

The Tenants also submitted this explanation of their claim in their evidentiary submissions:

We feel that given [the Landlord's] position as CEO of a company that renovates houses, that very company currently renovating our former residency ([address]) indicates that he in no way intended to follow through with his or a family members responsibility to occupy the house in good faith. We have been checking and seen no evidence of this. There is one photo from when we first saw the signs, Dec 2021, and photos of the house currently included. Not to mention him openly talking to us about the permits he was seeking from the city, which he strung us along with verbal extensions to our tenancy until he had the permits he wanted and simply asked us to leave. . . . Why would [the Landlord] not deal with the pests in a timely manner if he intended to occupy the house? Why was our registered mail returned to sender? How are we expected to believe that a wealthy contractor in Vancouver buys a house for almost a million dollars, that is in a prime location yet in borderline tear down condition, to actually live in it?

### Analysis

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

The Tenants applied for compensation pursuant to section 51 of the Act, because they testified that the Landlord has not fulfilled the stated purpose on the Two Month Notice. Section 51 (2) states that a landlord must pay the tenant:

...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.

As explained in Policy Guideline 50:

Section 51 (2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

The effective vacancy date on the Two Month Notice was May 31, 2021, and I find that within six months, by November 30, 2021, the stated purpose for the Two Month Notice had not been accomplished. The Tenants said that the house was torn down, but they did not provide a photograph of an empty lot. However, I find they provided sufficient evidence to prove on a balance of probabilities that the Landlord failed to fulfil the stated purpose of the Two Month Notice.

The Landlord did not attend the hearing to explain any extenuating factors that resulted in them not fulfilling the purpose of the Two Month Notice. As a result of the evidence before me, overall, I **award the Tenants** with **\$19,800.00** or 12 months' rent from the Landlord pursuant to sections 49, 51 and 67 of the Act.

Given their success in this matter, the Tenants are also awarded recovery of their

**\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act.

I, therefore, grant the Tenants a **Monetary Order** of **\$19,900.00** from the Landlord pursuant to section 67 of the Act.

### Conclusion

The Tenants are successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. I found that the Landlord failed to fulfill the stated purpose of the Two Month Notice, which ended the Tenants' tenancy in the residential property pursuant so section 49 of the Act; therefore, the Tenants are awarded 12 times the monthly rent for a total of **\$19,800.00**.

The Tenants are also awarded recovery of their **\$100.00** Application filing fee from the Landlord. The Tenants are granted a Monetary Order of **\$19,900.00** from the Landlord.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: November 29, 2022

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Residential Tenancy Branch