



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNDCT, MNETC, FFT**

### Introduction

This hearing dealt with an application by the tenants 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;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended ("the tenant"). The tenant RA spoke on their behalf.

The landlord attended with the lawyer TD ("the landlord").

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties provided their email addresses for the delivery of the Decision.

The parties confirmed they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings based on submitted, relevant and admissible evidence are set out below.

The tenant's claim was for the following:

1. Compensation of 12 months rent (for a total claim of \$15,120.00) under the Act as the landlord did not occupy the unit after issuing a Two Month Notice to move out.
2. Reimbursement of filing fee.

The tenant withdrew all other claims which are dismissed without leave to reapply.

The landlord denied the tenant was entitled to compensation.

The landlord claimed there were extenuating circumstances which prevented them from occupying the unit. The landlord requested the application be dismissed.

### *Tenancy Agreement*

The parties agreed as follows.

The landlord purchased the building from KP. The building contained the tenant's downstairs unit and a apartment upstairs.

The tenant had a tenancy agreement with KP (not a party to this application) as follows:

INFORMATION	DETAILS
Beginning Date	April 15, 2021
Vacancy Date	November 6, 2021
Rent payable on first of month	\$1,260.00

### *Two Month Notice*

The parties agreed as follows.

The landlord entered into an agreement with KP to purchase the building. The building contained the tenant's unit and an upstairs apartment.

Both the tenant and the upstairs occupant were issued a Two Month Notice stating the purchaser (the landlord) intended to occupy their units. Both did not dispute the Notices, and both vacated their apartments.

The previous landlord KP issued a Two Month Notice to the tenant described below. The Two Month Notice was issued at the request of the landlord, the purchaser.

A copy of the Two Month Notice was submitted which is in the standard RTB form. The Notice stated, "Copy of purchaser's written request for the seller to issue an eviction notice attached."

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	October 28, 2021
Effective Date of Notice	December 31, 2021
Service	Acknowledged
Application for Dispute Resolution filed	March 21, 2022

The grounds for the Notice were stated as:

1. The rental unit will be occupied by the landlord or the landlord's spouse.
2. 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 purchase or a close family member intends to good faith to occupy the rental unit.

The landlord provided evidence as follows with respect to the tenant's claims.

#### *Landlord's Submissions*

The landlord submitted substantial documentary evidence, including the following:

1. Affidavit of the landlord with exhibits
2. Affidavit of the landlord's father MAZ and mother NZ
3. Letter from landlord's employer of January 26, 2022, terminating his employment (Exhibit)

The landlord confirmed his Affidavit in his testimony. He testified as follows.

For some years, the landlord was employed remotely with an out of province company, primarily working from BC where he lived with his parents in a different municipality from the one in which the building was located. From time to time, the landlord would travel to his employer's office for brief periods.

The landlord described the history of the transaction involving the tenant's unit in "the Chilliwack property" in his Affidavit:

2. I entered into a contract of purchase and sale dated October 23, 2021, (the "Contract") to purchase the Chilliwack Property with the intention to occupy it as my principal residence. My intention being to move into the Chilliwack Property as my principal residence as I had returned to British Columbia from Alberta and was at that time living with my parents. Attached as Exhibit "A" to this my affidavit is a copy of the Contract.
3. A \$40,000 deposit was paid to the Sellers within twenty-four (24) hours of acceptance of the offer, which said offer being accepted on October 24, 2021. This goes to my intent to purchase the Chilliwack Property.
4. In or around October 27, 2021, I removed subjects on the offer and this made the Contract a binding legal agreement. Attached as Exhibit "B" to this my affidavit is a copy of the Subject Removal.
5. I instructed the realtor to provide a "Buyers notice to Seller for Vacant Possession" dated October 27, 2021, the day subjects were removed, to the Sellers of the Chilliwack Property and the Sellers duly provided a two-month notice to end tenancy to the tenants/applicants with a vacancy date of December 31, 2021. It being my intention to occupy the Chilliwack Property as my principal residence.

In December 2021, the landlord testified he heard a rumour that he may be laid off. After the tenant moved out, the landlord became increasingly concerned that he would lose his job and would be unable to complete the January 4, 2022 closing, causing a loss of his deposit. The landlord submitted no documentary evidence in support of this concern.

Concerned about being laid off, the landlord assigned the contract to his parents who purchased the property on January 4, 2022. The landlord's Affidavit stated:

8. In or around December 13, 2021, I assigned the Contract to my parents as the layoff rumours continued and work had noticeably begun to slow. This was done so that I would not lose the Deposit, as I was legally obligated to complete the purchase of the Chilliwack Property and my parents agreed to assist in the matter. Attached as Exhibit "C" to this my affidavit is a copy of the assignment of contract.

9. In or around January 04, 2022, the purchase of the Chilliwack Property by my parents was completed.

10. In or around January 26, 2022, my employment was terminated. Attached as Exhibit "D" to this my affidavit is a copy of my termination letter.

11. I have not been able to find full employment since my termination and due to a lack of current employment salary, and as all of my savings went towards the \$40,000.00 deposit, I was required to live at my parents Surrey property as I could not afford property taxes, utilities, rent or mortgage payments.

During the hearing, the landlord stated he is currently employed.

Accordingly, the landlord's parents completed the purchase on January 4, 2022 and are currently the registered owners of the property.

The landlord's parents' Affidavit stated they intended to move into the unit. However, they discovered the location was inconvenient and too far away from their accustomed medical services. They decided not to move.

The landlord stated in his Affidavit:

12. My parents considered moving into the Chilliwack Property and renting out their Surrey property but they found the commute from Chilliwack to be both too far and difficult a drive at their age.

The landlord acknowledged that neither the landlord nor his parents ever occupied the unit. The landlord testified his intention had always been to occupy the unit until he became concerned about being laid off:

15. It had always been my intention to occupy the Chilliwack Property in good faith as my principal residence and I had intended to go through with the purchase. I took all steps necessary to show this, including but not limited to removing subjects on the offer and putting down a \$40,000.00 deposit. However, due to the extenuating circumstances of my employment being terminated, I was unable to occupy and fully afford the Chilliwack Property.

16. I had always intended in good faith to occupy the Chilliwack Property and purchase it as my own property. However, my loss of a job and the high costs of maintaining the house, such as mortgage payments and utilities, led me to move in with my parents and led my parents to decide to rent out the Chilliwack Property so they can pay for its costs.

On January 10, 2022, a local realtor issued an announcement, a copy of which was submitted by the tenant, stating as follows:

Huge Congratulations to [HZ] [the landlord] and Family on their New investment purchase this 3 YEAR OLD Basement entry Home built by a local well reputed builder! Great layout/floor plan with large living area and fully finished basement with self contained 2 bedroom in-law suite.

The landlord testified that the “investment purchase” referenced in the above announcement referred to a home purchase and should not be interpreted to mean the landlord and family intended throughout to purchase a rental property.

The landlord stated he acted on behalf of his parents after the purchase on January 4, 2022. While he was not certain of the date, during January 2022, the landlord advertised the unit for rent. They were both rented mid-February 2022.

The landlord stated each unit in the building rented for an increased amount. The tenant’s unit, rented to the tenant for \$1,250.00, was rented mid-February 2022 for \$1,800.00.

The total rent for both apartments was increased from \$3,100.00 (before the purchase) to \$4,295.00 (after the purchase).

In summary, the landlord testified his plans to occupy the unit were changed by concern over loss of employment and he lost his employment on January 26, 2022. He claimed this concern was a change amounting to “extenuating circumstances” and he should not have to pay the tenant twelve months’ rent as compensation under the Act.

### *Tenant’s Submissions*

The tenant took the position that the landlord never intended to occupy the unit. He purchased the building for investment purposes and to raise the rent. The tenant asserted the combination of factors leads to the logical and reasonable conclusion that the landlord never intended to occupy the unit and was taking advantage of strong market rental increases to re-rent at a substantially higher rate.

The tenant pointed to the following factors which indicate a probability the landlord intended all along to rent the unit.



The rent increased after the purchase (\$3,100.00 to \$4,295.00 for both apartments in the building).

As well, the tenant claimed that the lay-out of the two apartments made it unlikely that a single person would occupy the entire building. The tenant expressed the opinion the building was not designed to be intended as a single-family residence but was constructed as two stand alone units.

Further, the tenant claimed that the landlord did not establish any inability to complete the purchase on January 4, 2022 amounting to extenuating circumstances and he relied on unsubstantiated, unproven rumours to assert extenuating circumstances.

Finally, the tenant asserted the rapidity of advertisements of the unit, the amount of the new rents, along with the realtor's announcement of the purchase being for investment, all combine to convey a reasonable conclusion the landlord planned a rental revenue building with increased rentals.

The tenant submitted testimony in support of several documents, key among which are the following:

1. Screenshots showing the unit was advertised for rent online on January 10, 2022, initially for \$2,550.00 monthly.
2. Copy of local realtor's announcement (referenced above) of January 10, 2022 stating the landlord and family had purchased an investment property

The tenant testified at length about the challenges of moving.

### *Landlord's Reply*

The landlord was uncertain of the date the unit was offered for rent. He submitted no documentary evidence to dispute the tenant's assertion concerning the beginning of advertising on January 10, 2022.

The landlord did not dispute the local realtor announced the purchase in the social media posting submitted by the tenant. However, the landlord said that the reference to “investment property” could mean the landlord and family had acquired a home; the interpretation that it was a rental revenue property did not conclusively follow.

The landlord stated he would have moved into the unit if he had not been concerned about losing his job, an eventuality which occurred.

### Analysis

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

### *Credibility*

A useful guide regarding credibility, 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.

I have carefully reviewed the evidence. Considering the testimony and evidence in its totality, I find the landlord's version of events not to be 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.

I find the landlord's submissions not to be persuasive or credible. Therefore, I do not give the landlord's testimony much weight. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

In any event, I find the circumstances described by the landlord, if true, do not meet the threshold of establishing extenuating circumstances.

### *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 not met the burden of proof that there were extenuating circumstances preventing him from moving into the unit.

My findings are set out below.

*The Act (all emphasis added)*

The Notice was issued pursuant to section 49 of the *Act* which states:

(5 ) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

**(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;**

(ii) the purchaser is a family corporation and 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 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act*:

(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 the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the

effective date of the notice, and

- (b) the rental unit, except in respect of the purpose specified in section 49 (6)(a), has been 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 applicable, from

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

- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As stated earlier, the landlord argued that his concern he would lose his job, amounted to “extenuating circumstances” preventing him from moving into the unit.

### *Extenuating Circumstances*

It is open to the landlord to submit that extenuating circumstances prevented him from moving into the rental unit within a reasonable period after the effective date of the Notice.

*RTB Policy Guideline 50* states as follows about extenuating circumstances:

## E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

I find the landlord has not met the burden of proof that there are extenuating circumstances that stopped the landlord from accomplishing the stated purpose of the Notice. I find the landlord's concern about losing his job did not prevent him from moving into the unit. The landlord may have had suspicions he may be laid off but did not know the change of his employment until January 26, 2022,

several weeks after he transferred the property to his parents and 3 weeks after the closing.

While the landlord did eventually lose his employment, I find the concern he stated he experienced is not adequate to meet the threshold of the Act or the Policy Guideline. I find it is not unreasonable and unjust for the landlord to pay compensation in these circumstances.

In conclusion, I find the landlord has failed to prove extenuating circumstances prevented him from moving into the rental unit within a reasonable period after the effective date of the Notice.

Therefore, I find section 51(2) of the Act applies.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant 12 times the monthly rent which I calculate to be \$15,120.00.

As the tenant is successful in this application, the tenant is entitled to reimbursement of the filing fee of \$100.00 for a total Monetary Order for \$15,220.00.

Conclusion

The tenant is granted a Monetary Order under section 51(2) in the amount of \$15,220.00.

This Monetary Order must be served on the landlord. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC

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 25, 2022

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Residential Tenancy Branch