# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRT, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for the cost of emergency repairs, under sections 33 and 67;
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Applicants OV and SN and respondent DZ attended the hearing. The applicants were assisted by JO (the tenant) and the respondent was assisted by JZ (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue - Partial Withdrawal of the Application

At the outset of the hearing the tenant advised that she is not seeking a monetary order for the cost of emergency repairs.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to withdraw their claim for a monetary order for the cost of emergency repairs.

Preliminary Issue – Amount claimed

The tenants are claiming a monetary order in the amount of $35,340.00 (12 times the monthly rent), under section 51(2) of the Act. This amount is above the monetary limit for claims under the Small Claims Act.

Section 58(2) of the Act states:

> Except as provided in subsection (4) (a), the director must not determine a dispute if any of the following applies:
> (a)the amount claimed, excluding any amount claimed under section 51 (1) or (2) [tenant's compensation: section 49 notice], 51.1 [tenant's compensation: requirement to vacate] or 51.3 [tenant's compensation: no right of first refusal], for debt or damages is more than the monetary limit for claims under the Small Claims Act;

As the tenants' claim is under section 51(2) of the Act, I accept the tenants' claim for compensation in the amount of $35,340.00.

Preliminary Issue – Request for adjournment

During the hearing the landlord requested to adjourn the hearing to provide further evidence.

Rule of Procedure 7.9 states:

> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
> • the oral or written submissions of the parties;
> • the likelihood of the adjournment resulting in a resolution;
> • the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> • whether the adjournment is required to provide a fair opportunity for a party to

be heard; and
• the possible prejudice to each party.

I denied the landlord's request to adjourn the hearing. The landlord had to be prepared for the hearing and should have served the evidence in accordance with the Rules of Procedure before the hearing.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule of procedure 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

The tenant affirmed the tenancy started in August 2020 with a prior landlord and continued with the respondent landlord. The landlord submitted a document signed by the tenant on October 03, 2021 confirming the tenant moved out on October 03, 2021.

Both parties agreed that monthly rent was $2,945.00, due on the first day of the month. The landlord collected a security deposit in the amount of $1,472.50 and returned it to the tenants.

Both parties agreed the landlord served in person and the tenants received the 4 Month Notice to end Tenancy (the Notice) on March 22, 2021. The March 22, 2021 Notice was submitted into evidence. It states the tenants should move out by September 30, 2021 (the Notice's effective date) because the landlord plans to demolish the rental unit. The Notice does not indicate the landlord obtained the permits necessary for the demolition.

The landlord stated she started demolishing the rental unit on June 18, 2022, as the demolition permit was issued on June 17, 2022. Later the landlord testified she started demolishing the rental unit on April 29, 2022 but it was not completed until June 2022. The tenant said the rental unit was demolished after June 29, 2022.

The landlord affirmed she served the Notice before obtaining the permits because the application for the demolition permit usually does not take longer than six months to complete and the landlord imagined the permit would be issued before October 01, 2021, the first day after the Notice's effective date.

The landlord claims that she demolished the rental unit within a reasonable time after the Notice's effective date, considering the extenuating circumstances the landlord faced.

The landlord stated that the application process for the demolition permit was slower, as the city of Vancouver transitioned the application process from paper-based to digital files because of the pandemic. The landlord testified the architect who assisted the landlord in the demolition permit application process got Covid and the architect needed extra time to complete the paperwork for the demolition permit application. The landlord said she was not aware the demolition application permit would take a long time to complete.

The landlord submitted:

- an email from the city of Vancouver dated May 18, 2021 indicating the landlord submitted an application for a demolition permit on April 19, 2021.
- a Fortis BC document indicating the landlord intended to excavate the rental unit on April 23, 2021.
- an estimate for the demolition of the rental unit on September 29, 2021.
- an email dated November 11, 2021 with an estimate for a permit application.
- a form dated November 18, 2021 stating the landlord's agent is conducting an inspection of the rental unit as required by the demolition permit process.
- an email dated February 16, 2022 from the landlord's agent indicating the "pre-permit checklists" were revised.
- The salvage and abatement building permit issued on April 29, 2022 for the salvage and abatement. This permit is part of the demolition permit process.
- An email from the city of Vancouver dated August 17, 2022. It states:

> Here is some information below regarding our permitting process:
> For building applications in the City of Vancouver, prior to the start of construction we issue 3 permits:
> 1. Salvage and abatement permit – This permit allows the applicant to remove hazardous building materials in preparation for demolition.
> The completion of this permit is required for demolition permit issuance. After the

> completion of this permit, the existing building can no longer be occupied.
> 2. Demolition permit
> 3. Building permit
> **Typically when the existing building is occupied with tenants, the salvage and abatement permit is often provided, by the landlord, along with the notice to end tenancy.**
>
> (emphasis added)

The landlord affirmed that no compensation is owed and that Schuld v. Niu, 2019 BSCS 949 (Schuld v. Niu) applies to the current situation.

The tenant stated that the landlord did not demolish the rental unit within a reasonable period after the Notice effective's date and that there are no extenuating circumstances. The tenant testified that in Schuld v. Niu the British Columbia Supreme Court states:

> A notice under s. 49(6) cannot be given until the landlord has all the necessary permits and approvals required by law and, of course, also intends to demolish the unit. (para 18, emphasis added)

The landlord said she served the Notice in good faith and had a genuine intention to demolish the rental unit.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Per section 51(2) of the Act, the onus to prove the case is on the landlord.

I accept the undisputed testimony that monthly rent was $2,945.00. Based on the October 03, 2021 document, I find the tenant moved out and the tenancy ended on October 03, 2021.

Sections 49(2)(b) and 49(6) of the Act states:

> (2)Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy:
> […]

(b)for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
(i)not earlier than 4 months after the date the tenant receives the notice,
(ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.
[…]
(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
(a)demolish the rental unit;

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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,

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord from:

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

Residential Tenancy Branch (RTB) Policy Guideline (PG) 50 states:

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

**(emphasis added)**

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The relevant point at issue is whether the landlord demolished the rental unit within a reasonable time after the Notice's effective date in light of the claimed extenuating circumstances.

I will first assess whether the landlord faced extenuating circumstances after the landlord served the Notice.

The landlord served the Notice on March 22, 2021 and applied for the necessary permits to demolish the rental unit on April 19, 2021.

I find the landlord's testimony about extenuating circumstances vague and not convincing. The landlord did not explain why she could not hire another architect to assist her with the demolition permit application. The landlord admitted that she was not aware how long it would take for the demolition permit application to be completed and that she imagined the permit would be issued before October 01, 2021, the first day after the Notice's effective date.

The Fortis BC document issued on April 23, 2021 does not prove the landlord faced extenuating circumstances, as it only indicates the landlord intended to excavate the rental unit on April 23, 2021.

The September 29, 2021 estimate for demolition does not prove that the landlord faced extenuating circumstances, as it is only an estimate for the demolition.

The November 11, 2021 email with an estimate for a permit application, the November 18, 2021 inspection form, the February 16, 2022 pre-permit checklist and the building permit issued on April 29, 2022 do not prove that the landlord faced conditions that were outside his control regarding the application process for the demolition permit.

The email from the city of Vancouver dated August 17, 2022 is very clear: “Typically when the existing building is occupied with tenants, the salvage and abatement permit is often provided, by the landlord, along with the notice to end tenancy.”

Based on the above reasons, I find the landlord did not face extenuating circumstances.

RTB PG 2B states:

> When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they give the tenant notice.

RTB PG 50 states:

> A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

Based on the testimony offered by both parties and the building permit issued on April 29, 2022, I find the landlord started the demolition of the rental unit on April 29, 2022 and completed it after June 29, 2022.

As the tenancy ended on October 03, 2021, three days after the Notice’s effective date, and the landlord started demolishing the rental unit on April 29, 2022, almost seven months after the notice’s effective date, I find the landlord did not start demolishing the rental unit within a reasonable period.

In Schuld v. Niu, the British Columbia Supreme Court states:

> [13] The tenant, the petitioner here, applied for compensation under s. 51(1) and (2) of the Act. The application relied on s. 51(2), and claimed compensation in the amount of $10,200. The arbitrator's decision reasons as follows:
> The Landlord issued the Notice pursuant to section 49(3). Notably, section 49(3) uses the word "occupy" not "reside" or "live in". Meaning must be given to the words actually

used in the legislation. "Occupy" and "reside" have different meanings. Since the Act does not require the Landlord to "reside" in the rental unit, whether the Landlord actually resided or lived in the rental unit is not relevant.

[14] The arbitrator refers to definitions of "occupy" or "occupied" as found in Black's Law Dictionary. The arbitrator then says:
Based upon the undisputed evidence before me, I find that no other person took possession of the rental unit from the Landlord following the issuance of the Notice. Since no other person took possession of the rental unit for nearly a year after the tenancy ended, I am satisfied that the Landlord occupied the rental unit for at least six months starting December 31st, 2017 (the effective date of the Notice).
I am satisfied the landlord fulfilled the stated purpose of the 2 Month Notice such that I find the Tenant is not entitled to compensation under section 51(2). Therefore, I dismiss his claim against the Landlord.

[15] The central reasoning relied upon by the arbitrator is that, for purposes of s. 49(3), the landlord's intention to demolish the premises and to utilize the premises for construction of another residence sufficient to end the tenancy. In my view, in the circumstances, s. 49(3) was not applicable. Section 49(6) was applicable. The landlord seems to have relied upon the wrong section. He was very clear about the purpose for which he wanted the premises, and that was to demolish the premises and build a new residence, including the separate laneway house that he offered to rent back to the tenant at some future time. The landlord's entitlement to issue a notice to end occupancy or to end the occupancy could only have been found under s. 49(6) and not s. 49(3).

[16] I should add that there is no indication of lack of good faith on the part of the landlord. There is nothing to indicate that he is not sincere when he says things have just taken longer than he thought.

[17] In my view, the word "occupy" as used in s. 49(3) must be read in the context of the statute and, bearing in mind statutory objectives, it is clear to me that the specific purpose of these sections is to limit the circumstances in which a landlord may give a Notice to End Tenancy (see Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21, 154 D.L.R. (4th) 193, cited by British Columbia v. Philip Morris International, Inc., 2018 SCC 36). There are two separate circumstances. One scenario is where the landlord intends to occupy the rental unit as a residence for his own purposes; the other scenario is where the landlord intends to demolish the rental unit to construct something different. The arbitrator has chosen to expand the definition of the word "occupy" in s. 49(3) so that it encompasses and takes within it, therefore, ss. (6), which is the subsection relating to demolishing the rental unit. In my respectful view, that deprives ss. (6) of practically all meaning. The result would be

> that landlords could give notice under s. 49(3) even if s. 49(3) is not applicable, but s. 49(6) is applicable.
>
> [18] **The key difference, of course, is that a notice under s. 49(6) cannot be given until the landlord has all the necessary permits and approvals required by law and, of course, also intends to demolish the unit. Those circumstances that would underlie the ending of a tenancy under s. 49(6) were not in place even by the time the Residential Tenancy Branch hearing took place before the arbitrator, and, as far as I have been given to understand, on the hearing of this petition, still not taken place. So the petitioner's complaint that he could have remained in the premises for quite a bit longer than he did seems on the surface, at least, to be valid. However, it is not my place to express an opinion on the underlying merits of the issue before the arbitrator.**
>
> [19**] I am satisfied, however, that the arbitrator's interpretation of the word "occupy" as found in s. 49(3) led the arbitrator into error, and the arbitrator did not therefore evaluate the claim of the tenant within the proper legal context**. The arbitrator ruled that the claim was invalid because the premises had, in fact, been used for the purpose indicated in the notice, which was occupation by the landlord. In my respectful view, that interpretation, within the context of the statute, and bearing in mind its purposes, is patently unreasonable and, in fact, irrational.
>
> (emphasis added)

I find that Schuld v. Niu does not apply to the issues before me, as the relevant issues before me are if the landlord demolished the rental unit within a reasonable time after the Notice's effective date and if the landlord faced extenuating circumstances. In Schuld v. Niu the Supreme Court of British Columbia found that the arbitrator wrongly interpreted the word "occupy".

In light of the above remarks, I find the landlord served the Notice without the necessary permit and failed to prove, on a balance of probabilities, that circumstances that were beyond the landlord's control prevented the landlord from starting to demolish the rental unit within a reasonable period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of $35,340.00 (12 x $2,945.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of $100.00.

In summary, the tenants are entitled to a monetary award in the amount of $35,440.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of $35,440.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Supreme Court of British Columbia 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: December 07, 2022

Residential Tenancy Branch