



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- 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.

Tenant SM (the tenant), landlord JN and AN attended the hearing. The landlords were assisted by agent AA. Witness for the landlord DN also attended. The tenant represented tenant DK. 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."

### Preliminary Issue – Service

The notice of hearing is dated April 20, 2022.

The landlords confirmed receipt of the notice of hearing and the evidence (the materials) in April or May 2022.

Based on the landlords' testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

The landlord courier mailed the response evidence to the tenants on December 02, 2022. The landlord did not serve the response evidence earlier because he was busy. The landlord contacted the tenant via telephone to inquire about an email address for service, but the tenant did not answer the phone calls. The landlord affirmed the packages were available for the tenant on December 06, 2022.

The tenant stated she did not receive the response evidence.

Per section 90(a) of the Act, the response evidence mailed on December 02, 2022 is deemed served on December 07, 2022.

Rule of Procedure 3.15 states:

**3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. **The respondent's evidence should be served on the other party in a single complete package.**

**The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**

(emphasis added)

The hearing was on December 13, 2022. As the landlord's response evidence is deemed served on December 07, 2022, I excluded it, per Rule of Procedure 3.15.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for 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 and witnesses, 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 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenancy started on August 01, 2016 and ended on December 29, 2021. Monthly rent when the tenancy ended was \$600.00, due on the first day of the month. The landlords purchased the rental unit on October 25, 2021.

Both parties also agreed the landlords served and the tenants received a two month notice to end tenancy for landlord's use (the Notice) in person on October 29, 2021. The landlords served the Notice for AN to occupy the rental unit. AN and JN co-own the rental unit and AN is JN's mother.

The tenant submitted a copy of the Notice into evidence. It states the landlord will occupy the rental unit. The effective date was December 31, 2021.

Both parties agreed the rental unit is in a rural area, far away from major urban centres.

JN testified that AN was not able to move in immediately because the rental unit needed repairs. JN said the tenants left the oil tank dry and the heat was not working. JN affirmed that pipes need to be replaced, there was water damage and extensive cleaning was needed. The carpet was in poor condition and there were broken windows.

JN stated that AN is an older lady and JN installed railings on the stairwell.

JN testified he started the repairs on January 01, 2022. JN was able to complete the repairs necessary to make the rental unit suitable for AN on April 21, 2022.

AN said that she moved to the rental unit on April 21, 2022 and has been living at the rental unit to this date. AN affirmed she has been paying the electricity bill for the rental

unit since February 2022. AN provided the client number for the electricity company. AN stated she has been receiving mail at the rental unit since February 2022.

Witness DN is the wife of JN. DN testified that AN has been living at the rental unit since April 21, 2022. DN confirmed the rental unit's address.

JN said that he completed the necessary repairs in a reasonable time and he was not able to complete the repairs in a shorter time because of the rental unit's rural location and because the repairs happened during winter.

The tenant affirmed she does not believe that AN has been occupying the rental unit. The tenant stated that on January 01, 2022 the rental unit was liveable. The oil tank was working properly, the rental unit had heat, there was one broken window covered with a tape and the carpet in the entranceway had a hole.

### Analysis

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 49(1) of the Act states: "close family member means, in relation to an individual, the individual's parent, spouse or child"

Section 51(2) of the Act states:

(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.

[...]

(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.

(emphasis added)

I accept the undisputed testimony that the Notice was served with the intent of landlord AN to occupy the rental unit.

I find that landlord AN must have occupied the rental unit from January 01 to June 30, 2022, as the Notice's effective date was December 31, 2021.

Residential Tenancy Branch Policy (RTB) Guideline 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.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

RTB Policy Guideline 2A states:

6-month occupancy requirement

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).

[...]

#### **E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE**

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or

- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
- the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended.

Per section 51(2) of the Act, the landlords have the onus to prove that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and that the rental unit was occupied for at least 6 months by AN.

I find the testimony offered by landlords JN and AN and witness DN is more detailed, credible and convincing than the testimony offered by the tenant.

Based on the more convincing testimony offered by JN, AN and DN, I find, on a balance of probabilities, the rental unit needed minor repairs when the tenancy ended. I find that JN replaced pipes, repaired water damage and damaged windows and carpet and installed railings on the staircase between January 01 and April 21, 2022. I further find, on a balance of probabilities, that AN moved to the rental unit and has been occupying it since April 21, 2022.

I accept the uncontested testimony that the rental unit is located in a rural area, far away from major urban centres.

Considering the repairs, the rental unit's location and that the repairs happened during winter, I find that JN conducted the repairs and AN moved to the rental unit within a reasonable period of time.

Thus, the tenants are not entitled to a monetary order under section 51(2) of the Act.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

### Conclusion

I dismiss the tenants' application 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: December 14, 2022

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Residential Tenancy Branch