



# 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 for Dispute Resolution (the Application) that was filed by the former Tenant (Tenant) on April 13, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- One month's compensation in the amount of \$1,650.00 related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 51(1) of the Act;
- \$19,800.00 in compensation (12 month's rent) related to a Two Month Notice under section 51.1 of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on December 15, 2022, and was attended by the Tenant, the Landlord, and the Landlord's agent (Agent) Z.Z., who was also one of their family members. All testimony provided was affirmed. The participants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited,

except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, and the Notice of Hearing. At the hearing, the Agent stated that the Landlord had received the Tenant's NODRP and that there were no concerns with either the date or method of service. As a result, the hearing proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I have accepted all of the documentary evidence before me from both parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

The Tenant L.M. stated that the other applicant named in the Application, D.M., is a minor child. There was no disagreement from the Landlord or Agent. As a result, I find that D.M. is actually an occupant of the rental unit, rather than a tenant under the tenancy agreement, and therefore has no rights or obligations under the Act. The Application was therefore amended with the consent of the parties to remove D.M. as a named applicant/tenant.

### Issue(s) to be Decided

Is the Tenant entitled to one month's compensation in the amount of \$1,650.00 under section 51(1) of the Act?

Is the Tenant entitled to 12 month's compensation in the amount of \$19,800.00 under section 51(2) of the Act?

Is the Tenant entitled to recovery of the \$100.00 filing fee under section 72(1) of the Act?

### Background and Evidence

The parties agreed that the Tenant was served with a Two Month Notice at the end of January 2022. A copy of the Two Month Notice was provided for my review and consideration. The Two Month Notice is on the 2021 version of the form, is signed and dated January 30, 2022, has an effective date of March 31, 2022, and states that the notice to end tenancy has been given because the rental unit will be occupied by the child of either the Landlord or the Landlord spouse. The parties agreed that the tenancy ended on March 31, 2022, because of the Two Month Notice and that rent at that time was \$1,650.00 per month.

The Tenant stated that the Two Month Notice was clearly not served in good faith as the rental unit was put up for sale March 29, 2022, three days before the effective date and the end of the tenancy, and sold within 6 months thereafter. As a result, the Tenant sought \$19,800.00, the equivalent of twelve times the monthly rent of \$1,650.00 payable under the tenancy agreement at the end of the tenancy, pursuant to section 51(2) of the Act. The Tenant also sought one months rent in the amount of \$1,650.00 pursuant to section 51(1) of the Act as they stated that they neither received the required compensation from the Landlord, nor withheld the last months rent in lieu of receiving this compensation. Finally, the Tenant sought recovery of the \$100.00 filing fee.

The Agent and Landlord disagreed that the One Month Notice was not served in good faith, stating that at the time the One Month Notice was served, they had no intention of selling the property and the Landlord's son Z.Z. (the Agent) wanted to move out of the main house and into their own space, as the rental unit is a coach house on the same property where their family's main residence is located. The Agent and Landlord stated that it was not until closer to the effective date of the Two Month Notice that they became interested in selling the residential property on which the rental unit is located, along with another property, as interest rates were beginning to rise and anticipated to rise significantly over the coming months. The Agent stated that as a result, both the property on which the rental unit is located, and another property owned by the Landlord, which was also tenanted, were put up for sale on March 29, 2022.

The Agent stated that they moved into the rental unit one or two days after the Tenant vacated, and that they have resided there ever since. The Landlord and Agent pointed to three witness letters from four friends/acquaintances of the Agent stating that they helped the Agent move in and/or have visited them at the rental unit where they now

reside and can confirm that they both moved in and still reside there. The Landlord and Agent stated that although the rental unit was sold on July 12, 2022, the new owners do not take possession until sometime in January of 2023. They also stated that although another property which was, and still continues to be, tenanted, was put up for sale at the same time, the listing was ultimately cancelled but the tenant of that property was never served with a notice to end tenancy. A witness letter from the alleged tenant of that property was submitted for my consideration in support of this testimony.

The Agent and Landlord stated that despite the fact that their long-term intentions for the property changed after the One Month Notice was served due to rising interest rates, the Landlord's son Z.Z., who is a close family member of the Landlord, nevertheless moved into the rental unit within a reasonable period of time after the effective date of the Two Month Notice, and resided there for a period of at least six months thereafter, as they still reside there as of the date of the hearing, December 15, 2022. As a result, they argued that the Tenant should not be entitled to any compensation under section 51(2) of the Act as they complied with the purpose stated for ending the tenancy set out in the Two Month Notice both within and for the required legislative time periods.

Although the Agent and Landlord acknowledged that the Tenant neither withheld the last months rent nor was provided with compensation in the amount of one month's rent as a result of having been served with the Two Month Notice, they stated that this was because they were unaware of this requirement.

Both parties submitted documentary evidence for my consideration including but not limited to the tenancy agreement, copies of MLS listings, witness statements, photocopies of ID for the authors of the witness statements, text messages, the Two Month Notice, and photographs.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed between the parties. I am also satisfied that the Tenant was served with a Two Month Notice pursuant to section 49(3) of the Act, and that the tenancy ended because of the Two Month Notice on March 31, 2022.

Section 51(1) of the Act states that 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. Section 51(1.1) of the Act states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord. At the hearing the parties agreed that the Tenant had neither withheld the last month's rent nor been provided with compensation by the Landlord in the amount of one month's rent, which the parties agreed was \$1,650.00 at the time the tenancy ended. As a result, I grant the Tenant's Application seeking \$1,650.00 in compensation from the Landlord pursuant to section 51(1) of the Act.

Section 51(2) of the Act states that subject to subsection (3), the landlord who issued 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 does not establish that:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- the rental unit 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.

Although the Tenant argued that the Two Month Notice was not served in good faith as the rental unit was put up for sale a few days before the end of their tenancy and sold less than four months later, nothing in section 51 of the Act, which is the section under which the Tenant has sought compensation, speaks to the issue of good faith. In my opinion, the good faith requirement relates only to the matter of enforceability of a Two Month Notice under section 49 of the Act, when a tenant seeks to dispute the notice and continue the tenancy, as section 49 of the Act specifically states that good faith is a requirement. This interpretation is supported by Policy Guideline #2a.

While I agree that not only putting the rental unit up for sale before the tenancy has even ended, and selling it within six months of the effective date of the Two Month Notice strongly suggests that the Two Month Notice was not served in good faith and that it was issued as a means to an end (the end being the sale of a property not subject to an ongoing tenancy agreement), rather than a genuine desire by the Landlord to have the rental unit vacated so that it could be occupied by their close family member, this Application was not about enforceability of the Two Month Notice. Instead, it was about whether compensation is owed to the Tenant under section 51(2) of the Act. While the Tenant may well have been successful in having the Two Month Notice

cancelled under the circumstances had they sought to dispute it, they did not, and neither section 51(2) of the Act, nor section D of Policy Guideline #2a, which speaks to the matter of compensation under section 51(2) of the Act, state that compensation may be granted even if the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and the rental unit has been used for that stated purpose for at least 6 months' duration, provided the landlord had ulterior motives for issuing and subsequently complying with the stated purpose for ending the tenancy as set out in the notice.

I find that I am bound by the specific wording of the Act, and the wording of the Policy Guideline as currently written, to grant monetary compensation under section 51(2) of the Act only if the stated purpose for ending the tenancy as set out in the Two Month Notice, was not accomplished within a reasonable period after the effective date of the notice, and/or the rental unit was not used for that stated purpose for at least 6 months' duration beginning within a reasonable period after the effective date of the Two Month Notice AND the circumstances set out under section 51(3) do not apply.

The parties agreed that the tenancy ended on March 31, 2022, because of the Two Month Notice, and I am satisfied on a balance of probabilities based on the affirmed testimony of Z.Z. at the hearing, who is the son of the landlord, and the written witness statements from four friends/acquaintances of Z.Z., that Z.Z. not only moved into the rental unit within a reasonable period after the effective date of the notice, but that they still resided there at the time of the hearing on December 15, 2022, more than eight months after the end of the tenancy and the effective date of the Two Month Notice. I also accept as fact the undisputed and affirmed testimony of the Landlord and Agent Z.Z. that although the rental unit, which is a coach house, and the associated main residence, were sold on July 12, 2022, the new owners were not granted possession under the contract of purchase and sale until January of 2023, almost one year after the effective date of the Two Month Notice and the end of the tenancy.

Based on the above, I therefore dismiss the Tenant's Application seeking compensation pursuant to section 51(2) of the Act, without leave to reapply. However, as the Tenant was successful in a portion of their claims, I therefore grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act I therefore grant the Tenant a Monetary Order in the amount of \$1,750.00, and I order the Landlord to pay this amount to the Tenant.

Conclusion

The Tenant's claim for compensation pursuant to section 51(2) of the Act is dismissed without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,750.00** pursuant to sections 51(1) and 72(1) of the Act. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: January 11, 2023

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Residential Tenancy Branch