



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNETC, FFT**

### Introduction

This hearing deals with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Respondent's Agent, Witness and Respondent's Legal Counsel, and the Applicant, Witness, and Applicant's Legal Counsel attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Neither party took issue with service of the Notice of Dispute Resolution Proceeding package nor each parties' evidence. Aside from the Applicant wanting to cross examine the Respondent on his affidavit, this matter was adjourned and the Respondent was summoned to this new hearing date to speak to his affidavit. Although his Legal Counsel submitted they tried to get the Respondent to attend, they were unable to make contact.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (the "RTB") Rules of Procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

## Preliminary Matters

### *Naming parties*

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Applicant's application, the Applicant named the Respondent, not by the individual's name, but by using the property management company's name. In the hearing, Legal Counsel asked that the individual Respondent's name be included as the landlord rather than the property management company name. The Applicant agreed with this change. As all parties agreed, the correct Respondent name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Respondent is properly named as the individual landlord name and not the property management company's name. I amended the Respondent's name, and it is reflected in this decision.

### *Unrelated Claims*

The Applicant claims monetary compensation for damage and loss due to excessive cleaning and carpet cleaning. While this claim was not severed at the hearing, I find this claim is not related to the primary claim in this matter. RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. I find this monetary claim is not sufficiently related to the primary claim; therefore, I will consider only the Applicant's request for an Order for compensation from the Respondent related to a notice to end tenancy for Landlord's Use and the claim for recovery of the application filing fee at this proceeding. The Applicant's other claim is dismissed with leave to re-apply.

## Issues to be Decided

1. Is the Applicant entitled to an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Applicant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant testified that this periodic tenancy began in September 2018. The Applicant confirmed that the monthly rent at the end of the tenancy was \$3,331.00. A security deposit of \$1,625.00 and a pet damage deposit of \$1,625.00 were collected at the start of the tenancy. An October 14, 2021 email to the Applicant shows that \$500.00 was retained by the property manager for "*patch/painting repairs and missed cleaning as per move-out inspection report*". The tenancy ended on September 30, 2021.

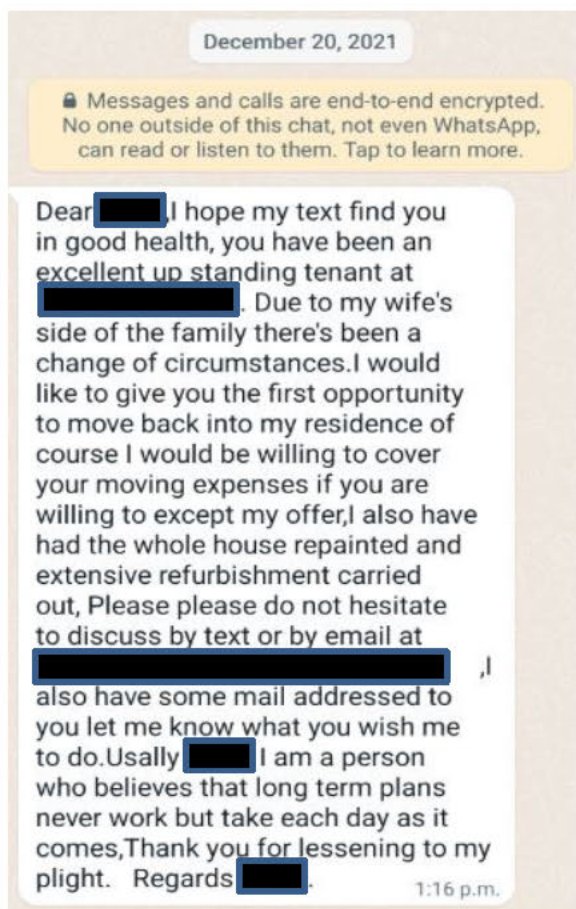
The Two Month Notice was signed on July 23, 2021. The reason to end tenancy noted on the Respondent's Two Month Notice was that the landlord or the landlord's spouse will occupy the unit. The effective date on the Two Month Notice was September 30, 2021.

The Applicant asserts that the Respondent did not act in good faith and never had the intention to live in the residential property. On June 15, 2021, the Applicant received an email from the property manager stating the original reason the Respondent had was that he wanted the Applicant to sign a mutual agreement to end the tenancy as the Respondent planned to renovate the rental unit because he was going to sell it. The Applicant did not agree to sign the mutual agreement to end the tenancy.

The Respondent carried out the renovations, never moved in, and re-rented the rental unit five months later with a \$1,000.00 per month increase in the rent.

The Respondent provided affidavit evidence that he relocated from an International destination to live in the residential property for a period of six months and eight days. The Applicant requested that the Respondent attend the hearing so he could be cross examined on his affidavit. The Respondent was summoned. The Respondent did not attend the adjourned hearing date.

On December 20, 2021, the Respondent wrote the Applicant saying:



The Applicant uploaded a February 25, 2022 advertisement of the property that states under price history that the listing is removed, and the current price is \$4,200.00 which the Applicant believes is the current rental price.

The Applicant's children and life were based in the city where the residential property is situated. While the Applicant was bringing her children to school or picking them up, she would take those opportunities to check out the residential property to determine if the Respondent had moved into the rental unit. The Applicant uploaded 25 videos and 10 photos of the residential property with a letter describing her observations over the period from October 4, 2021 to April 14, 2022. The observations ranged from:

October 4 to October 6, 2021	House vacant front and back
October 6, 2021	Neighbour's truck parked in driveway*
October 8, 2021	House vacant, neighbour's truck parked in driveway*, blinds not changed

October 13, 2021	House vacant, neighbour's truck parked in driveway*, blinds not changed, lawn not mowed
October 25, 2021	House vacant, neighbour's truck parked in driveway*, blinds not changed, lawn not mowed
October 28, 2021	House vacant, neighbour's truck parked in driveway*, blinds not changed, lawn not mowed
November 1, 2021	House vacant, neighbour's truck parked in driveway*, blinds not changed, lawn mowed
November 2, 2021	House vacant, blinds changed, renovations begin
November 22, 2021	House vacant, carpets torn out and renovations in progress, minimal to no household garbage
January 5, 2022	House vacant, renovations in progress, no garbage out on garbage day
February 4, 2022	House vacant, renovations in progress Picture taken through a window, the living room floor is redone with laminate/wood flooring, the room is devoid of furniture
February 16, 2022	House vacant, renovations in progress, only renovation garbage, no daily household waste, some new blinds
March 16, 2022	House vacant, renovations in progress, Bobcat in driveway
April 5, 2022	House vacant, renovations in progress
April 14, 2022	New tenants

\* The Applicant spoke to this neighbour, and he told her that the Respondent contacted him and asked him to park in his driveway to make it look like someone was living there. The neighbour said the Respondent was still out of the country and he did not know if the Respondent was coming back.

The Applicant's Witness was often with the Applicant when she did her drive-bys of the residential property. He confirmed it was quite obvious that no one was living in the rental unit. He stated there seldom was changes in the property until the minor renovations began. Sometimes the Applicant's Witness would knock on the door or walk pass all the big windows to knock on the patio door, and he testified that there was no furniture or belongings in the home. The Applicant's Witness stated that noticeable changes occurred when new tenants moved into the rental unit. Sometime in April 2022,

he said it appeared to be a family, with vehicles parked in the driveway, and belongings in the yard. It was quite obvious that someone had moved in.

The Applicant seeks 12 months compensation as she claims the Respondent did not accomplish the stated purpose according to the Two Month Notice pursuant to Section 51(2) of the Act.

The Respondent's Legal Counsel asked the Applicant if her observations of the residential property were predominantly during the day. The Applicant agreed. The Respondent's Legal Counsel submitted that most people are away during the day at work.

The Respondent's Witness, the property manager for the home, testified that the Respondent contacted him, so he could ask the Applicant if she could move out because of his desire to do renovations. He said the Respondent planned to sell the home. He said the Applicant refused to move out, so the Respondent told his Witness that '*it was fine, he would do the renovations while she was there.*' The Respondent's Witness said he went back to the Applicant to explain that she may not want to stay as it would be very inconvenient. She still declined.

The Respondent's Witness said the renovations were going to be extensive, and the Respondent decided to take it back for Landlord's Use. He issued the Two Month Notice for the Respondent. The Respondent's Witness denies threatening the Applicant.

### Analysis

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. RTB Rules of Procedure 6.6 states the onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, in this case, the Respondent must prove that they accomplished the stated purpose for ending the tenancy under Section 49 for at least six months.

Section 51 of the Act is the relevant section of the legislation for this matter. It states:

### ***Tenant's compensation: section 49 notice***

- (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.*

RTB Policy Guideline #50-Compensation for Ending a Tenancy addresses issues for resolving disputes of when a landlord does not fulfill their legal obligations after issuing a Section 49 notice (e.g., the Two Month Notice). Policy Guideline #50 states:

...

**C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS**

*A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:*

- *accomplished 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 (except for demolition).*

The tenancy ended on September 30, 2021. The six-month time period ended on March 31, 2022.

The onus is on the Respondent to prove that they accomplished the purpose for ending the tenancy under Section 49 of the Act and that they used the rental unit for its stated purpose for at least six months. The Respondent did not attend the hearing to be cross examined on his affidavit. I give no weight to his submitted affidavit.

In contrast, the Applicant provided solid proof that the Respondent did not accomplish the stated purpose for ending the tenancy. The Applicant made observations of the residential property over a period of close to eight months. The Applicant's Witness corroborated her evidence as he often accompanied her on her drive-bys of the residential property. The Respondent's Legal Counsel did not convince me that the Respondent occupied the rental unit, and I find that the Respondent did not accomplish the stated purpose for ending the tenancy and use the rental unit for at least six months.

The Respondent did not attend this hearing to provide evidence about possible extenuating circumstances that stopped the Respondent from accomplishing the stated purpose for ending the tenancy pursuant to Section 51(3) of the Act. I do note on December 20, 2021 that the Respondent mentioned in his WhatsApp message that *"Due to my wife's side of the family there's been a change of circumstances."* Without anymore, I do not find that the Respondent has proven on a balance of probabilities that extenuating circumstances prevented him from accomplishing the stated purpose. I find



the Respondent is not excused from paying compensation to the Applicant specified under Section 51(2) of the Act.

I find the Applicant is entitled to compensation in the amount of **\$39,972.00** pursuant to Section 51(2) of the Act.

As the Applicant is successful in this part of her claim, she is entitled to recovery of the **\$100.00** application filing fee.

The Applicant's total monetary award is calculated as follows:

CLAIMS	AMOUNTS
Compensation for Section 49 notice	\$39,972.00
Plus application filing fee	\$100.00
TOTAL:	\$40,072.00

#### Conclusion

I grant a Monetary Order to the Applicant in the amount of \$40,072.00. The Respondent must be served with this Order as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: February 22, 2023

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Residential Tenancy Branch