



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNETC, FFT**

### **Introduction**

This hearing dealt with the Applicants' 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, her Spouse and the Applicants 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.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Respondent's Four Months' Notice personally served on June 7, 2021, the Applicants confirmed receipt, served on June 7, 2021;
- the Applicants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on May 22, 2022, Canada Post Tracking Number on cover sheet of decision, the Respondent confirmed receipt, deemed served on May 27, 2022; and,

- the Respondent's evidence package served by registered mail on December 30, 2022, Canada Post Tracking Number on cover sheet of decision, the Applicants confirmed receipt, deemed served on January 4, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Are the Applicants entitled to an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Applicants 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 parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2019. A second fixed term tenancy ended on August 1, 2021, then the Applicants vacated the rental unit. Monthly rent was \$1,500.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy and was fully returned to the Applicants at the end of the tenancy.

The reason to end tenancy noted on the Respondent's Four Months' Notice was that the Respondent was going to convert the rental unit to a non-residential use. The effective date of the Four Months' Notice was October 31, 2021.

A week before the Applicants received the Four Months' Notice, the Applicants testified that the Respondent was telling them that she wanted them "*to stay forever, and you should put your ping pong table in the spare room.*" The Applicants stated that the Respondent told them that five years down the road the Respondent planned to Airbnb the rental unit. The Applicants submitted that the Respondent did not act in good faith when she issued the Four Months' Notice.

The Applicants uploaded an email from the Respondent to the Applicants dated August 16, 2022 which shows that the Respondent's friends and family stayed in the rental unit, and that the rental unit was not fully used as an Airbnb:

*... Last spring we hadn't yet settled on the exact timing for when we planned on adapting the downstairs for personal purposes. ... we started looking forward to making our home more available for our family and friends who we knew would soon be wanting to come stay with us. ...*

*Shortly after you moved out in August, we began repurposing the downstairs. ... Less than a month later (September), our oldest daughter came and used the suite for an extended period. Soon after (in early October) [male Landlord]'s parents came for a stay. Throughout the fall and winter, we were hosting many additional friends and family members, as well as using the suite for personal recreational purposes. As [female Respondent] told [female Applicant] before you moved, it was no secret that we hoped to Airbnb the suite from time to time, but that was not our first and main priority. ...*

*... By September we were using the unit personally. We have and continue to use the suite for personal use. ...*

*It is true that in December we listed the suite for Airbnb rental during an opening when [Respondent's Spouse]'s parents needed to postpone a second visit. We hadn't planned to begin airbnb'ing the suite yet, but since [Respondent's Spouse]'s parents postponed, we thought it would be a good time to make a trial run. ...*

*We did not rent the suite out again until the middle of February, which, if it matters, is more than six months from when you moved out. Since then we've continued to regularly use it for hosting personal guests while also intermittently using it as an Airbnb.*

The Applicants rely on the RTB Policy Guideline 2B-Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use and thought 'non-residential use' meant building a shop. The Applicants also point out that they moved out August 1, 2021, and the first Airbnb business did not occur until December 2021. They stated having the rental unit vacant is not using the suite for non-residential use. They also assert that family member and friends' use sound more like residential use.

The Respondent testified that their stated purpose was to host family in the rental unit, and to convert it to their own residential space. The Respondent uploaded evidence of payments made to trades people in November and December 2021. The Respondent

also uploaded a renovation expense log dated from August 2021 to January 2022, indicating the additional home items purchased for the rental unit.

The Respondent stated it was never their intention to make the Airbnb idea more lucrative than renting out the unit. The Respondent uploaded a transaction Airbnb rental history for the suite. The unit was used one time for an Airbnb rental from December 23, 2021 to December 30, 2021. They made \$1,249.07. The remaining time the rental unit was used by the Respondent as an extension of their living space.

The time the Respondent used the rental unit space to host friends and family, they were not charged an Airbnb rate for their stays in the suite.

When the Respondent used the Four Months' Notice to end the tenancy, they stated there is no option on the notice to end for reclaiming for primary residential use. They used the Four Months' Notice to allow the Applicants to have the maximum amount of time to relocate. The Respondent's spouse testified when they issued the Four Months' Notice they had a conversation with the female Tenant that highlighted their plans for the rental unit and what their reasons were for ending the lease.

The Respondent's spouse found a definition of primary residential space defined in the tax laws saying even if we rent it, as long as we are occupying it, it is still considered our principal residence. They found in the income tax folio definition for principal residence which states that even if a person inhabits a housing unit for a short period of time in a year, this is sufficient for the housing unit to be considered ordinarily inhabited in the year by that person. A person receiving only incidental rental income from a housing unit, is not considered to own the property merely for the purpose of gaining or producing income.

The Respondent said that Airbnb's are not regulated in the city, but the Respondent did state they have a business license to run their Airbnb which they have kept current.

When the Respondent was made aware of the Applicants' dispute resolution request, the Respondent reached out to the Applicants and offered to compensate them with the Airbnb rental income. The Applicants declined.

## 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. The onus to prove their case is on the person making the claim.

Section 51(2) and (3) of the Act state:

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

**51** ...

- (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.*

The Respondent's Four Months' Notice was served on June 7, 2021. The stated purpose in the Four Months' Notice was to convert the rental unit to a non-residential use. The effective date of the Four Months' Notice was October 31, 2021. The Applicants vacated the rental unit because of receipt of the Four Months' Notice on August 1, 2021. I find, based on a strict interpretation of the Act, that the six months duration began on November 1, 2021 and ended April 30, 2022.

The Respondent and the Respondent's spouse testified that their stated purpose was to host family in the rental unit, and to convert it to their own residential space. Another reason for using the Four Months' Notice was to provide more time to the Applicants to find alternative living accommodation if they needed it. The Respondent verbalized to the female Tenant that five years down the road the Respondent planned to Airbnb the rental unit. The Respondent did some small renovations in the rental unit and purchased furnishing items to make the space more livable for their own use. The Respondent did contract with one Airbnb client for December 23, 2021 to December 30, 2021.

The Applicants submit that the Respondent did not act in good faith when they served the Applicants with the Four Months' Notice. The Applicants feel that non-residential use means converting the rental unit to a shop. The Applicants also submitted that having the rental unit vacant for such a long period is not using the suite for non-residential use. Finally, they also assert that family member and friends' use sound more like residential use. I agree with this submission.

RTB Policy Guideline #50-Compensation for Ending a Tenancy states that a landlord must pay compensation to a tenant if they end a tenancy under Section 49 of the Act, and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least six months. Further, another purpose cannot be substituted for the purpose set out on the Four Months' Notice to end tenancy even if this other purpose would also have provided a valid reason for ending the tenancy.

I find the Respondent did not accomplish the stated purpose noted in the Four Months' Notice to end the tenancy. Pursuant to Section 51(3) of the Act, a landlord may be excused from paying additional compensation to a tenant if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending the tenancy. Policy Guideline #50 states:

### **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.*

The Respondent and the Respondent's Spouse honestly testified that their stated purpose was something other than what the Four Months' Notice stated to the Applicants. The Respondent did conduct some minor renovations and furnished the rental unit as what I find would be appropriate to run an Airbnb. However, the Respondent did not fully conduct themselves in the business of running an Airbnb. Instead, they used the rental unit for their own use, or to host family or friends' stays, and they did not charge their family or friends for the stays in their converted rental unit. I see using the property for residential accommodation, different from using the residential property for short-term vacation accommodation. I find using the property for Airbnb accommodation as non-residential use; however, the Respondent was not using the rental unit in this fashion.

I do not find the Respondent's alternative uses of the rental unit constituting extenuating circumstances that stopped them from accomplishing the stated purpose within a reasonable period which would make it unreasonable or unjust to hold the Respondent to their legislated responsibilities. I find the Respondent did not accomplish the stated purpose for ending the tenancy for conversion to non-residential use and they are not excused from paying compensation to the Applicants specified under Section 51(2) of the Act.

The Applicants are entitled to compensation in the amount of **\$18,000.00** pursuant to Section 51(2) of the Act. As the Applicants are successful in their claim, they are entitled to recovery of the application filing fee. The Applicants total Monetary Award is determined to be \$18,100.00.

For the benefit of the Respondent, the Respondent may wish to discuss with an Information Officer at the RTB the options available to them when managing their rental units. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 604-660-1020 (Lower Mainland)

250-387-1602 (Victoria)

1-800-665-8779

Website: [//www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies](http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies)

### Conclusion

I grant a Monetary Order to the Applicants in the amount of \$18,100.00. 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 15, 2023

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Residential Tenancy Branch