



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CORONET REALTY LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNETC, FFT

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that the Dispute Resolution Package and evidence that was submitted to the Residential Tenancy Branch in May and June of 2022 was sent to the Landlord, via registered mail, although she does not recall the date of service. The Agent for the Landlord acknowledged receipt of these documents. As the Agent for the Landlord acknowledged receipt of the documents, the evidence was accepted as evidence for these proceedings.

On January 23, 2023 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally delivered to the Landlord's business office on January 23, 2022. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 20, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenants, via registered mail, on December 22, 2022. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 21, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenants, via registered mail, on January 20, 2023. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 23, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenants, via registered mail, on January 23, 2023. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 27, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenants, via registered mail, on January 27, 2023. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord and the Tenants agree that:

- This tenancy began on December 22, 2014;
- Two individuals own the unit;
- At the end of the tenancy the monthly rent was \$1,693.96;

- The Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, which declared they must vacate the unit by November 30, 2021;
- The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit was to be occupied by the child of the Landlord or the Landlord's spouse; and
- the rental unit was vacated on November 17, 2021.

The female Landlord, with the assistance of the Interpreter, stated that:

- when the Two Month Notice to End Tenancy for Landlord's Use was served, the Landlord's daughter intended to move into the residential complex;
- prior to deciding to move into the unit, the daughter had not viewed the rental unit since the tenancy began in 2014;
- her daughter viewed the rental unit on November 20, 2021;
- when the daughter viewed the complex after it was vacated, she decided it needed to be renovated;
- nobody has moved into the rental unit;
- it took time to find a contractor due to COVID;
- in December of 2021 they received a quote of \$45,000.00 plus GST to renovation the upper portion of the unit;
- in December of 2021 they received two quotes to renovate the entire residential complex, both of which exceeded \$350,000.00;
- the quotes for renovating the entire complex were more expensive because they involved raising the house;
- in June of 2022 it was determined that there was asbestos in the residence, which complicated the renovation;
- renovations have not started;
- the rental unit is still vacant; and
- because of the cost of renovating it may be better to simply rebuild.

The Agent for the Landlord stated that the Landlord is currently in "limbo" and they will not know what they will do with the complex until they receive this decision.

When the Landlord was asked why the Landlord did not inspect the rental unit prior to serving a Two Month Notice to End Tenancy for Landlord's Use, the female Landlord stated, with the assistance of the translator, that they did not wish to interfere with the Tenants.

The Tenants agree that the rental unit is still empty and has not been renovated. The female Tenant stated that given the age of the complex, the Landlord should have expected that there was asbestos in the complex. The female Tenant stated that in Landlord's exhibit 8E the Landlord declared that they will be rebuilding the unit.

### Analysis

On the basis of the undisputed evidence, I find that:

- the Tenants were paying monthly rent of \$1,693.66 at the end of this tenancy;
- the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49(3) of the *Act*, which required them to vacate the rental unit by November 30, 2021;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the Landlord's children would be moving into the rental unit; and
- the rental unit was vacated on November 17, 2021.

On the basis of the testimony of the female Landlord, I find that:

- when the One Month Notice to End Tenancy for Cause was served to the Tenants, the Landlord's daughter was planning on moving into the rental unit;
- after the rental unit was vacated, the Landlord determined that the residential complex needed to be renovated;
- they subsequently determined that it would be very expensive to renovate;
- they subsequently determined that there was asbestos in the complex, which complicated the renovation process;
- the Landlord's daughter has not moved into the rental unit;
- no renovations have been done; and
- the complex is currently empty.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the Landlord's daughter has not moved into the rental unit; the Landlord has not embarked on any renovations; and more than 14 months have passed since the rental unit was vacated, I find that the Landlord's daughter has not taken reasonable steps to

move into the rental unit and she has not occupied the rental unit for a period of at least six months. I therefore find that the Landlord must pay the Tenants \$20,327.52, which is the equivalent of 12 times the rent that was being paid at the end of the tenancy.

Section 59(3) of the *Act* authorizes me to excuse the landlord from paying the penalty imposed by section 59(1) of the *Act* if, in my opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and 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.

Residential Tenancy Branch Policy Guideline 50 suggests that 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, 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; and
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The policy guideline suggests 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;
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

I find that the Landlord should not be excused from paying the penalty imposed by

section 59(1) of the *Act*, as I do not find that the reasons the Landlord's daughter did not move into the rental unit constitute exceptional circumstances.

I find that the Landlord knew, or should have known, the condition of the rental unit prior to serving the Tenants with the Two Month Notice to End Tenancy for Landlord's Use. When a landlord ends a tenancy because their child wishes to occupy the unit, the landlord, in my view, should be certain that the unit is suitable to be occupied by their children. In these circumstances the Landlord allegedly did not know that they would opt to make extensive renovations prior to their daughter moving into it. The Landlord's lack of proper planning does not, in my view, constitute, exceptional circumstances.

I have placed little weight on the Landlord's testimony that they did not inspect the rental unit prior to serving a Two Month Notice to End Tenancy for Landlord's Use because they did not wish to interfere with the Tenants. I find that the Landlord's decision to end the tenancy created a greater inconvenience for the Tenants than having the rental unit inspected by contractors.

I specifically note that the Landlord would not have had the right to serve the Tenants with a Two Month Notice to End Tenancy for Landlord's Use for the purposes of completing a renovation that required the rental unit to be vacant. In the event a landlord wishes to make renovations that require the rental unit to be vacant, a landlord must first apply for an Order of Possession pursuant to section 49.2 of the *Act*.

I further note that if a landlord wishes to end a tenancy because the unit is to be demolished, the landlord must give notice to end a tenancy pursuant to section 49(6)(a) of the *Act*.

I find that the Tenants' application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

I find that the Tenants have established a monetary claim of \$20,427.52, which is comprised of \$20,327.52 in compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of

\$20,427.52. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 07, 2023

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Residential Tenancy Branch