



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C POS HOLDINGS CORP (1099146 BC LTD) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 31, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package. The Tenant confirmed receipt of the Landlord's evidence package. No service issues were raised. I find both parties sufficiently served the required documents and evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the *Act*?

### Background and Evidence

The Tenant stated that monthly rent was \$1,600.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in February of 2022, and moved out on or around March 31, 2022. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

At the bottom of this Notice, the Landlord, as named on this application, was listed as the "purchaser".

The Tenant stated that she rented the rental unit from the previous owner and seller, and she does not know the purchaser, as listed on the Notice. When the house was listed for sale, the Tenants stated that the seller was asked by the purchaser to end the current tenancy so that they, or close family, could occupy the rental unit after the unit sold. The Tenant did not dispute the Notice, and moved out. The Tenant also provided a copy of the document titled "Tenant occupied property – Buyers notice to seller for vacant possession" (buyer's notice). In this document, which was drafted a day before the Notice was issued, it states the following:

**WHEREAS:**

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated December 23, 2021 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

**NOW THEREFORE** in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on April 28, 2022.

For the purpose of giving the Tenant Notice under Section 49 of the *Residential Tenancy Act*, the Buyer(s) address is [REDACTED] and the Buyer(s) hereby consent to the Seller(s) including the Buyer(s) name(s) and such address on the Tenant Notice for the purpose of Section 49(7) of the *Residential Tenancy Act*.

The above noted buyer's notice was signed by an individual named V.J. The Landlord confirmed in the hearing that V.J. was his real estate agent who was responsible for handling the purchase of this property.

The Landlord acknowledged that the company named as the purchaser on the above noted documents is his company. However, he stated that his realtor should be liable for this claim because she signed the document, not him. The Landlord also stated that although he had a purchase and sale agreement and had an offer that was accepted by the seller, he never actually became the registered owner, in the Land Title Office. The Landlord stated that he decided to assign the contract of purchase and sale for the house to another company. As a result, the Landlord stated he does not feel he should be considered a Landlord.

The Tenant stated that she saw her rental unit get posted for rent on May 22, 2022, and she provided copies of the rental ad posted online, which was for an additional \$700.00 in rent. The Tenant stated that she was undergoing cancer treatment at the time, so it was very poorly timed and hard to manage.

### Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

#### ***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).*

*A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:*

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

*Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

I turn to the following portion of the Act:

***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*

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not 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 the case may be, from*

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

In this case, I note the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, which is that they, or their close family as defined by the Notice, would be moving into the property. I note the Landlord stated that his agent signed the buyer's notice document, so she should be liable for this. However, I find it important to note that V.J., the Landlord's real estate agent, was acting as an agent for the Landlord/purchaser at the time the Notice was issued. The Landlord acknowledged that V.J. was his agent at the time, and since she was representing the Landlord for matters relating to the purchase of this property, I find the Landlord is liable for the issuance of this 2 Month Notice to End Tenancy (as well as the buyer's notice document). I note that the Landlord asserts that the buyer's notice was signed by V.J.

Further, I note the Landlord stated that he assigned the sale of the house to another company, who ultimately became the registered owner at the Land Title Office. However, regardless of whether or not the Landlord/purchaser assigned the purchase and sale agreement to another company, I find his company, as named on the Notice, is still liable, since the Notice was issued on behalf of his company. I find the Landlord/purchaser, as named on this dispute, was the Landlord at the material time, and is also responsible for ending the tenancy. As such, the Landlord is liable for compensation that is due for not complying with this section of the Act, following issuance of the Notice under section 49(5)(c) of the Act.

It is not disputed that the Landlord failed to move into the rental unit, as he admitted to assigning and re-selling the property almost immediately. I find this is a breach of section 51(2) of the Act. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I acknowledge there are reasons why the Landlord did not follow through with the grounds selected on the Notice, and that the sale was assigned to another company. However, I do not find they amount to “extenuating circumstances”, such that it would be unreasonable or unjust for the Landlord to pay the compensation. The circumstances appear to have been caused by the Landlord’s actions.

I award the Tenant \$19,200.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,600.00. I also award the \$100.00 filing fee.

I note the Landlord feels his agent should be liable. However, if he feels his agent erred in fulfilling her duties as his agent, he may wish to pursue this matter at a court of competent jurisdiction, since the RTB does not hear disputes between Landlords and their agents.

**Conclusion**

I grant the Tenant a monetary order in the amount of \$19,300.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may

file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: February 1, 2023

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Residential Tenancy Branch