



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1328959 B.C LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on May 1, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation because the tenancy ended as a result of a Two Month Notice to end Tenancy for Landlord's Use of Property, and the landlord has not complied with the Act or used the rental unit for the stated purpose; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 16, 2023, and was attended by the Tenants and P.B., one of the four alleged owners of the corporation named as the Landlord in the Application. All testimony provided was affirmed. As P.B. acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As P.B. acknowledged receipt of the Tenants' documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me from the Tenants for consideration. No documentary evidence was submitted by P.B. or another agent for the Landlord for my consideration. The parties 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 parties 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 parties 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 parties 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.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

#### Issue(s) to be Decided

Are the Tenants entitled to 12 times the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the Act?

Are the Tenants entitled to recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy commenced on January 10, 2022, and that rent in the amount of \$1,248.00 is due on the first day of each month. The parties agreed that a previous tenancy agreement had been in place with the previous owners of the rental unit, and that the new tenancy agreement was signed with the purchaser (Landlord) on the completion date for the sale, January 10, 2022. The parties also agreed that the terms and conditions for the tenancy were the same, except for the name of the landlord.

The parties agreed that on January 11, 2022, the Tenants were personally served with a Two Month Notice by the real estate agent for the Landlord, and that the Tenants gave early notice pursuant to section 50 of the Act, vacating on February 13, 2022. The Two Month Notice in the documentary evidence before me is on a 2021 version of the Residential Tenancy Branch (Branch) form, is signed and dated by an agent for the Landlord (A.K.) on January 11, 2022, and has an effective vacancy date of March 31, 2022. The Two Month Notice also states that the reason for ending the tenancy is because:

- The rental unit will be occupied by the Landlord or the Landlord's close family member, specifically the child of the Landlord or the Landlord's spouse;

- The Landlord is a family corporation and a person with voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit; and
- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord (previous owner), in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

P.B. stated that the corporation listed as the Landlord is owned by themselves and three other family members, their brother H.B., their father T.B., and their uncle L.B. As a result, P.B. stated that they believe the Landlord is a family corporation. The Tenants stated that although they do not know who the owners of the corporation are, they do not necessarily disagree that the Landlord may be a family corporation.

P.B. stated that the property was purchased, and the Two Month Notice was issued, not so that a specific family member could move in, but because they and some of their family members were trying to purchase farmland in the area and they wanted property where any of their family members could reside once it was purchased. P.B. acknowledged that the rental unit was never occupied by them, any of their family members, any of the other owners of the corporation, or any of their family members. P.B. stated that ultimately farmland was not purchased in the area, as their grandmother, whom they acknowledged was not involved in the purchase of farmland, passed away, and therefore they decided just to re-rent the property. P.B. argued that therefore the Landlord should be exempt from owing compensation under section 51(2) of the Act, as section 51(3) of the Act applies because extenuating circumstances (the death of their grandmother) prevented them from complying with the stated purpose for ending the tenancy. Further to this, P.B. stated that it is their understanding that the previous landlords (the sellers) could simply have ended the tenancy because they wanted to sell the property, and therefore the tenancy was always going to end.

In response the Tenants stated that not only has P.B. acknowledged failing to comply with the reason for ending the tenancy set out in the Two Month Notice, but no evidence has been submitted that they ever planned to comply or to support P.B.'s argument that extenuating circumstances occurred. The Tenants also submitted a text message with one of the previous owners dated October 9, 2023, wherein the previous owner stated that the purchaser, who is the Landlord named in the Application, wants to keep the existing tenants upon closing. As a result, the Tenants argued that neither a person owning voting shares in the corporation (if the Landlord is in fact a family corporation),

or a close family member of that person, intended in good faith to occupy the rental unit. The Tenants stated that as the stated purposes set out in the Two Month Notice for ending the tenancy were never accomplished, and no proof of extenuating circumstances was submitted or presented, they are owed the compensation set out under section 50(2) of the Act. Further to this, the Tenants stated that having to vacate the rental unit was very hard on them.

### 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 Tenants were served with a Two Month Notice pursuant to section 49 of the Act on January 11, 2022, and that the tenancy ended as a result on February 13, 2022. As the parties agreed that the terms set out in the tenancy agreement before me were correct, and the tenancy agreement states that rent in the amount of \$1,248.00 is due each month, I find that to be the case.

Section 51(2) of the Act states that 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:

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

At the hearing P.B. acknowledged that the rental unit was never occupied by the Landlord, which is a numbered company, themselves, any of their close family members, any of the other owners of the numbered company, or close family members of the other owners, and was instead re-rented. As a result, I find that none of the stated purposes for ending the tenancy set out in the Two Month Notice were accomplished within a reasonable period after the effective date of the notice, and that the rental unit was not used for any of the stated purposes for at least 6 months duration, beginning within a reasonable period after the effective date of the notice. I also note that two of the stated reasons for ending the tenancy set out in the Two Month Notice (the first and third grounds selected) were not valid grounds for ending the tenancy under section 49

of the Act as the Landlord is a numbered company, not an individual, and therefore they could never reasonably have been complied with by the Landlord. However, as P.B. stated that the Landlord is a family corporation, and the second ground selected on the Two Month Notice relates to the ending of a tenancy by a family corporation, I will now turn my mind to whether P.B. has satisfied me on a balance of probabilities that the Landlord is a family corporation and should be exempted under section 51(3) of the Act from having to pay the Tenants the compensation set out under section 51(2) of the Act, due to extenuating circumstances.

Although P.B. stated that extenuating circumstances prevented them, their close family members, the other owners of the numbered company, and the close family members of the other owners from occupying the rental unit, due to their grandmother's death, no documentary evidence was submitted in support of this position, which the Tenants called into question at the hearing. Further to this, even if I had been satisfied that P.B.'s grandmother passed away after issuance of the Two Month Notice, I do not find that this would meet the extremely high bar of an extenuating circumstance. By P.B.'s own admission at the hearing, their grandmother was not in any way involved with the prospective purchase of farmland in the area where the rental unit is located. As a result, I do not see how their passing would have prevented the Landlord from purchasing farmland. Further to this, if the Landlord was only planning to follow through with the stated purposes for ending the tenancy set out in the Two Month Notice if they bought farmland in the area, then they ought not to have served the Two Month Notice until farmland had been purchased. I therefore do not find that failing to buy farmland in the area where the rental unit is located after having already served the Two Month Notice, constitutes an extenuating circumstance under section 59(3) of the Act.

Based on the above, I find that P.B. has failed to satisfy me on a balance of probabilities that the Landlord was prevented from complying with the purposes for ending the tenancy set out in the Two Month Notice due to extenuating circumstances. I therefore grant the Tenants' Application seeking compensation pursuant to section 51(2) of the Act. I therefore grant the Tenants \$14,976.00 pursuant to section 59(2) of the Act. As the Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

### Conclusion

Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of **\$15,076.00** and I order the Landlord to pay this amount to the Tenants. The

Tenants are 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: February 15, 2023

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Residential Tenancy Branch