



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence.

### **Preliminary Matter**

The Respondent states that the tenancy that was ended was not a tenancy under the Act as the Tenant was using it primarily for business purposes. The Tenant states that the tenancy was under the Act and that the unit was occupied by the Tenant primarily as a residence. The Tenant provides a diagram of that portion of the unit that was used as office space for a home-based business.

Section 4(d) of the Act provides that the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement. Given that the Tenant's evidence of the use of a small area for their home based business that did not include the kitchen, living room, bedroom, or bathroom I find on a balance of probabilities that the unit was occupied as a residence and that the Act therefore does apply.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on July 15, 2019 and ended on May 31, 2022. Rent of \$2,500.00 was payable on the first day of each month. The security deposit has been dealt with. The tenancy ended as a result of the landlord serving the Tenant with a two month notice to end tenancy dated March 17, 2022 (the "Notice"). The stated effective date of the Notice is May 31, 2022. The purchaser of the unit (the "Respondent") provided the landlord with a letter asking the landlord to end the tenancy as the purchaser or a close family member of the purchase will occupy the unit. The Notice contains this reason.

The Respondent states that their mother moved into the unit on July 31, 2022 and had been delayed from moving in sooner due to medical emergency that occurred on May 15, 2022 and because of follow-up specialist appointments. Their father moved into the unit as well on August 28, 2022 after a specialist appointment on August 26, 2022. The parents had previously resided in another city. The Respondent provided no statements from the parents. The Respondent provides the statement of two neighbours as evidence of the mother's move into the unit. The Respondent states that the unit was already partially furnished before the mother moved in and provides a receipt from a local store for a bed and mattress dated August 1, 2022. The Respondent also provides copies of utility bills, credit card statements and forwarded mail to the unit address. The Respondent states that the insurance was changed from renter occupied property to owner occupied property on August 1, 2022. The Respondent provides photos of the parents in front of the unit holding various documents or times showing the dates.

The Tenant states that the Respondent's evidence of the date of the father's specialist appointment is inconsistent with the Respondent's written statement that sets out an appointment date of August 22, 2022. The Tenant states that they rented and occupied the entire house that contained two suites but that the upper suite was not legal as it had no stove or washer or dryer. The Tenant states that the Respondent's parent failed to occupy the unit within a reasonable time that the Tenant submits would be 2 weeks.

The Tenant states that by June 21, 2022 the unit was occupied by new tenants with the expectation of residing there for a one-to-two-year tenancy. The Tenant provides a recording of a conversation between a witness and other persons collected on June 21, 2022. The recording does not display the persons speaking and provides only audio of the conversation. The Tenant provides copies of two witness letters from neighbours that nobody occupied the unit until it was occupied by the two persons on June 21, 2022.

The Tenant states that the unit was listed for rent on November 3, 2022 and provides copies of the listing. The Tenant provides copies of 4 rental listings with rent for the upper suite advertised at \$1,200.00 per month, rent of the main suite at \$2,600.00 or rent of the entire unit at \$3,700.00 per month. The Tenant states that the listing photos all show an empty unit and that while the Respondent claims they were taken before move in the Tenant argues that they were taken in the fall. The Tenant states that the Respondent's photos of the parents provided to support their occupancy of the unit do not show any faces and are taken outside the unit. The Tenant states that the persons in the photos could be anyone and is not evidence of occupation of the unit.

The Respondent states that the plans for the move into the unit was made in March 2022 and that given their age, medical condition, not having use of any English, and being without a vehicle they needed someone to live with the parents to help them. The Respondent states that one of the persons speaking in the video was contacted as this

person had wanted to move to the city for business purposes. The Respondent states that this person "E" and friends moved into the unit on June 21, 2022 having committed to a 4 month tenancy. The Respondent states that by June 1, 2022 renovations were required by the city.

The Respondent states that E was not aware of the conversation being recorded on June 21, 2022 and that E's reference to a long term stay meant in the city and not in the unit. The Respondent argues that the video should not be considered as E was not aware of the recording happening and did not consent to the recording. The Respondent is unable to provide any legal basis for the exclusion of the video as evidence.

The Respondent states that the unit was being advertised to find a new tenant to share the house with the parents. The Respondent states that they were looking for someone who spoke the same language as the parent who did not speak English and were offering a low rental rate in return. The Respondent refers to the statement of the listing agent provided as evidence for this hearing. The Respondent states that a couple was found to share the house for December 1, 2022. The Respondent states that the couple pays rent of \$1,500.00 per month with a shared kitchen, living room and laundry. The Respondent states that the couple also paid a security deposit. The Respondent states that they were unable to find new tenants who spoke the same language as the parents. The Respondent states that they had no choice to accept the couple as the parents could not be left alone in case of emergency.

The Respondent's Witness, E, states that they were previously residing out of province and looking for homes in the city as over the summer E got a job in the city. E states that they reached out to friends with homes in the city. E states that the Respondent's house was in a good location and that they would have use of 2 of the 3 bedrooms in the unit. E states that they agreed to rent the unit with the parents having exclusive use of one of the bedrooms and with E and his friends providing assistance to the parents

such as house cleaning, grocery shopping, driving the parents to shops as they had no driving licences, and to call the Respondent in case of emergency. E states that monthly rent of \$1,800.00 was paid for the shared unit and that while they wanted to stay longer, at the onset of September 2022 jobs became slow and rental costs in the area were too high, prompting them to return to the other province at the end of September 2022.

The Tenant states that one of the statements provided by the Respondent from a person residing in the unit during this time indicates that this person was unaware that they would be sharing the unit with the Respondent's parents.

E states that the other persons in the unit were the workers for E and that the person in the statement referred to, was the wife of one of those workers. The wife moved into the unit later than the others and did not know that it was shared or that they would be caring for the parents. E states that the worker was informed but that perhaps the wife was not informed. E only stayed at the unit a couple of times during the tenancy paid for all the rent and other costs for the rental. E states that a total of 4 male workers stayed at the unit over various times and with different work shifts. E states that at the start of the tenancy the utilities were in E's name. E states that this ended when they moved out of the unit in September 2022. E states that when the parents moved into the unit the parents paid no share of the utilities as their rent had been discounted.

The Tenant states that the wife was present in the unit on June 21, 2022.

The Respondent states that most of the responsibility for the care and assistance of the parents was carried out by the wife and the worker, her husband. The Respondent states that the husband moved into the unit on June 17 or 18, 2022.

The Respondent provided a statement from two other persons and had wanted these persons to attend the hearing to give testimony however as the time allotted for the

hearing ran out the Respondent indicated that did not want an adjournment or this purpose and agreed that these witnesses do not have be heard at the hearing. The Tenant states that they have no questions of these witnesses either as their statements are straightforward.

The Tenant states that an invoice for \$5,250.00 submitted as evidence of kitchen renovation done between June 1 to 6, 2022 appears fraudulent and that the address set out on the document indicates it being the address of a mining company. The Tenant states that the email and phone number does not link to a renovation business. The Respondent states that the renovations were required by their mortgage company and were done by a friend RH. The Respondent states that the invoice is not fraudulent and that RH would not fool the Respondent. The Respondent states that RH resides in another province but drove to the city for the renovations. The Respondent states that they could not find anyone else for the work.

### Analysis

Section 51(2) of the Act provides 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

- (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.

Section 51(3) of the Act provides that 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.

It is undisputed that the unit was not occupied by at least one of the parents of the Respondent as a residence until July 31, 2022. While the Respondent argues that occupation could not occur sooner due to medical requirements, the evidence to support required specialist attention consists only of copies of appointment reminders. There is no medical documentation from any medical doctor to support the inability of the mother to move sooner than August 2022 due to medical issues arising from a fall in May 2022 or to confirm either parent's required specialized medical care that could not be provided elsewhere. The documentation of the emergency visit for that fall is not complete as it is missing pages. There is no evidence of the mother being hospitalized due to injuries from the fall. There are no statements from the parents and the photos of the persons in front of the unit do not support the occupation of the unit by the parents as no faces are depicted and no occupation of the inside of the unit is depicted. A review of the Respondent's evidence of statements from the neighbours does not support occupation as they only refer to having met the parents and being told of their move into the unit.

I find the most persuasive evidence to be from the Tenant's video recording taken prior to the Respondent being informed of the Tenant's claim. The video recording is evidence of the unit having been rented to E with an expectation of a long tenancy. The Respondent's evidence that this expectation was for a long term stay in the city as opposed to the unit is not persuasive. While the Respondent argues that this recording should be excluded on the basis of no consent from E for that recording, as E was a party to the conversation being recorded I consider that consent was implied. Nonetheless it is undisputed that the unit was occupied by E paying rent for the use of the unit without the parents being in the unit until July 31, 2022. It is also undisputed

that the utilities for the unit was in E's name until E moved out. It is unknown why the Respondent gave evidence of the city requiring renovations to the unit and then also states that the mortgage company required renovations. This seems to be an inconsistency and does not support the occupation of the unit by the parents as their primary residence.

For the above reasons and given the undisputed evidence of rental monies taken for the occupation of the unit by E within 2 weeks of the effective date of the Notice and without a parent residing in the unit, I find on a balance of probabilities that the Respondent has not substantiated that the unit was occupied by the parent within a reasonable time after the effective date of the Notice and has not substantiated that the parents were prevented from occupying the unit because of extenuating circumstances.

The Tenant is entitled to the compensation claimed of **\$30,000.00** (12 x 2,500.00). As the Tenant has been successful with this claim I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$31,000.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$31,000.00**. If necessary, this order may be filed in the Small Claims Court 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 8, 2023

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Residential Tenancy Branch