



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction and Preliminary Matters

On February 28, 2022, the Tenants made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was originally set down to be heard on October 4, 2022, at 1:30 PM. However, this Application was subsequently adjourned, for reasons set forth in the Interim Decision dated October 5, 2022. This Application was then set down for a final, reconvened hearing on February 13, 2023, at 11:00 AM.

Tenants T.M. and C.S. attended the final, reconvened hearing, and E.S. attended later as a witness for the Tenants. The Landlord attended the final, reconvened hearing as well, with D.G. attending later as a witness for the Landlord.

At the outset of the final, reconvened hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

As noted in the Interim Decision, all evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

At the original hearing, the Tenant advised that the tenancy started in or around 2011 or 2012, and that the tenancy ended when they gave up vacant possession of the rental unit on June 30, 2021, pursuant to the Notice. Rent was established at \$1,100.00 per month and was due on the first day of each month. She stated that a security deposit of \$550.00 was also paid. As well, she stated that there was no written tenancy agreement.

The Landlord did not dispute that the rent was \$1,100.00 per month, or that the Tenants gave up vacant possession of the rental unit on June 30, 2021. He confirmed that the Tenants were served the Notice on April 19, 2021, by being placed in the Tenants' mailbox. The Notice was served by the original landlord (seller) of the rental unit, as instructed by the Landlord, because "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.” The effective end date of the tenancy was noted as June 30, 2021, on the Notice.

The Landlord advised that the company that he works for opened an office in another location and he decided to relocate. As such, he purchased the rental unit in March 2021 and moved into the rental unit “sometime” at the beginning of July 2021. He testified that his friend helped him move in, and he cleaned and painted the rental unit, while also working long hours. He stated that his wife had to leave twice due to family emergencies, and he referenced the documentary evidence provided to support this.

He submitted that he wanted to renovate his old home, with the intention to sell it, but this never happened. He advised that as his wife was away so much, as he was burnt out at his job, as his company was not satisfied with the performance of the new office, and as he and his wife owned two houses with essentially one income, he then moved back to their original house after the new year, in or around January 2022.

He acknowledged that he was approached in “September or October” of 2021 by someone who wanted to purchase the rental unit, and that he sold it on January 20, 2022. He did not make any submissions with respect to any extenuating circumstances.

Tenant T.M. advised that the Landlord purchased the rental unit, sight unseen, and that it required much work due to damage and mold in the rental unit. She testified that the neighbours lived less than a block away and did not observe anyone move in. As well, she stated that the neighbours also checked for the Landlord’s mail, and collected it for him. She submitted that her cat has a tracking device and when it went missing in August 2021, it was found near the rental unit. She testified that there was no one at the rental unit, that there were no signs of life there, that the blinds were open, that there was no furniture in the rental unit, and that the grass was overgrown.

She stated that she would walk her dogs past the rental unit and would not see the Landlord. As well, she advised that the neighbours would mow the Landlord’s lawn and would call the police when there were squatters in the property. She also added that the Landlord did not include an address for service on the Notice, and he attempted to avoid service of any documents.

The Landlord acknowledged that he did not think to submit any documentary evidence that corroborated his move into the rental unit. As well, he stated that he did not change

his primary address on his driver's license, for example, because he was working too much.

At the final, reconvened hearing, the Landlord advised that his witness, D.G., helped him to move in his major furniture, and also did small repairs to the rental unit. As well, he stated that he moved in another load of his property into the rental unit, but he did not need D.G.'s help. He also submitted that he had D.G. assist him in moving out in January 2022.

D.G. initially advised that he helped move the Landlord into the rental unit in the middle of July 2021, then corrected himself and stated it was the middle of June 2021. He stated that he was not sure of the exact date and that he "didn't remember" because it was a "long time ago", but he referred to his letter submitted as documentary evidence regarding the date that he helped the Landlord. He testified that he moved a queen-sized bed, a night table, a dining table, but he also stated that he "didn't really remember". He stated that he went to the rental unit to help the Landlord fix the furnace; however, he could not remember the date, other than it was in the fall. As well, he stated that he went to fix a leak in the kitchen sink in or around July 2021. He also stated that he would go to the rental unit for barbecues and that the Landlord was clearly living there.

Neither the Landlord nor the Tenants had any questions for D.G.

The Tenants' witness, L.S., then advised that she is retired, that she lives directly across from the rental unit where she can see the front of the rental unit, and that she met the Landlord a few months after he purchased the rental unit. She testified that he was painting the front of the rental unit only, in the summertime sometime, and she asked him when he was moving in. However, he stated that it would not be for a few months as his wife was out of the country. She stated that the Landlord did not have any curtains in the rental unit, that the drapes were always drawn open, and that she could see that the Landlord was not living there as there was no furniture in the rental unit, and she never observed him moving in.

She submitted that her husband would cut the Landlord's grass and that he would maintain the yard to ensure that it would look nice, so as not to attract squatters. She advised that she would collect his mail as he was never around, and that there was only one letter than was actually addressed to the Landlord as all the other mail was junk. She testified that she left this letter in the Landlord's mailbox, and it remained there for

approximately seven months after the effective date of the Notice. She stated that she saw the Landlord in the fall and told him about this letter, and he thanked her for informing him of it. Finally, she stated that they put a Christmas wreath on the door of the rental unit and candy canes and other decorations on the mailbox, approximately a week before Christmas, to make the rental unit appear occupied. As well, she stated that they removed these decorations around New Year's.

The Landlord advised that he had only met L.S. once, in July 2021, and that he informed her that he would be moving in; however, he was not sure of the date due to his wife's circumstances. He stated that he was a private person, that he would often come home very late, and that he would access the rental unit by the back lane of the property as he could observe L.S. staring into the property. He acknowledged that it is possible that L.S.' husband cut the grass in September 2021 as he was in Europe then. He also confirmed that he saw the Christmas decorations, but he thought this was put there by the neighbourhood children, so he threw them out.

He testified that he spent at least two weeks in July 2021 painting three sides of the rental unit and that he maintained the lawn and yard. However, he also stated that he worked 12 – 14 hours per day, Monday to Friday, from June 2021 onwards, and that he would "bounce out" on most weekends to leave the city. When he was questioned when he completed this painting due to his heavy work schedule, he then advised that he had two weeks of vacation at the beginning of July 2021, which then turned to "two and a half weeks vacation, on and off." As well, he proceeded to provide wildly contradictory testimony on how many days or weeks he spent painting the rental unit, and that he would do maintenance to the rental unit on weekends when he was not away.

The Landlord then advised that he was "not staying in the [rental unit] everyday" and that he would sometimes "crash" at his other property because he "technically has two houses" and he would stay at the other one if he was working in that area. He submitted that it was his intention to move into the rental unit, but his wife suddenly had to go to Europe, which was a "game changer." He confirmed that he would stay "more often" in the rental unit, and that "most of [his] furniture" was there. He acknowledged that he did not change his address to the rental unit, on his personal documents, because he was too stressed. He stated that he would collect his mail, but it is possible that L.S. may have done so when he was away.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where all the conditions on which the sale depends have been satisfied, and the purchaser asks the original landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord asked the original landlord to serve the Notice because all of the conditions of the sale were satisfied, and that he wanted to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated April 18, 2021, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

At the time the Notice was served, the Landlord advised that the intention was for him to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that “Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E).”

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 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 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances:

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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 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.
- 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 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 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 it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the Landlord in this instance has the burden to provide sufficient evidence over and above his testimony to establish that he used the property for the stated purpose. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent



with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the “purchaser or close family member” only. While the Landlord initially claimed to have moved into the rental unit, after he was questioned about the many contradictions and inconsistencies in his solemnly affirmed testimony, he then admitted that the rental unit was not his primary residence, and that he simultaneously lived at his other property as well. Based on this acknowledgement and complete change in position, I find that this causes me to be dubious of the reliability and credibility of the Landlord’s testimony on the whole.

As such, I am satisfied that the rental unit was clearly not occupied by the Landlord as his primary residence, as intended by the *Act* when this type of Notice is served. I do not accept that the intention of the *Act* was to allow a Landlord to evict a Tenant from a rental unit, only to sporadically occupy it for the minimum amount of time required under the *Act*, and then to sell it once that timeframe has elapsed. Based on Policy Guideline # 2A outlining that occupation for the purpose “to hold and keep for use” is inconsistent with the intent of Section 49, I am satisfied that the Landlord failed to use the rental unit for the stated purpose as per the *Act*. Consequently, the only thing I must consider now are extenuating circumstances.

While the Landlord submitted at the original hearing that there were no extenuating circumstances that prevented him from using the rental unit for the stated purpose, I can reasonably infer that this was because it was his previous position that he had occupied the rental unit as his primary residence. However, at the final, reconvened hearing, he mentioned that his wife’s trips to Europe were a “game changer”. While he did not elaborate much or explicitly make submissions that this was an extenuating circumstance, for his benefit, I will consider the merits of this position.

I accept the Landlord’s submissions that his wife went to Europe to assist her family. However, I note that the Landlord provided no direct testimony for why this was an extenuating circumstance that prevented him from occupying the rental unit as his primary residence. Given that he was initially untruthful about his full-time occupation of the rental unit, and then later acknowledged that he only occupied it when convenient, in conjunction with his failing credibility, I give little weight to any suggestion that there were any extenuating circumstances that prevented him from using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Ultimately, I find that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$13,200.00**.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$13,300.00** 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 6, 2023

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Residential Tenancy Branch