



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a residential tenancy dispute. In this application for dispute resolution, the tenant applied on June 7, 2022 for:

- the return of part or all of the security deposit and/or pet damage deposit;
- compensation because the purchaser who asked the landlord to end the tenancy has not complied with the Act or used the rental unit for the stated purpose; and
- recovery of the filing fee.

The hearing was attended by the tenant and her counsel, who I will refer to collectively as “the tenant.” The respondent and her representative also attended the hearing; I will refer to them collectively as “the respondent.” Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matter

The respondent testified that they purchased the unit with two other purchasers (GS and IS) and stated that these purchasers should also be respondents. The tenant did not request to amend their application to include GS and IS.

As the parties agreed the tenant did not pay rent to the respondent, I find the respondent never assumed the duties of a landlord. Therefore, I dismiss with leave to reapply the tenant’s application for the return of part or all of the security deposit and/or

pet damage deposit, as they have not named the proper respondent. The tenant is at liberty to make an application against their former landlord.

### Issues to be Decided

- 1) Is the tenant entitled to compensation because the purchaser who asked the landlord to end the tenancy has not complied with the Act or used the rental unit for the stated purpose?
- 2) Is the tenant entitled to the filing fee?

### Background and Evidence

While I have considered the testimony and presented documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant testified the most recent tenancy agreement began on January 1, 2021, and ended on September 30, 2021 as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 8, 2021. Rent at the end of the tenancy was \$2,000.00 a month. A copy of the unsigned tenancy agreement between the tenant and the selling landlord was submitted as evidence; it indicates that rent was \$2,000.00.

The respondent testified they had no knowledge of the tenancy.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property is submitted as evidence and indicates an effective date of September 30, 2021. It states that 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The respondent is named as the purchaser, and the Notice indicates that a copy of the purchaser's written request for the seller to issue an eviction notice is attached.

The respondent testified the Two Month Notice was served on the tenant without the respondent's knowledge.

Submitted as evidence is a copy of a buyer's notice to seller for vacant possession. It states that the buyer and seller entered into the contract of purchase and sale on July 6, 2021. The notice is dated July 7, 2021, lists the respondent as the buyer and has an electronic signature.

The respondent did not deny that they purchased the rental unit and that their name was on the Notice. The respondent testified that they did not sign the buyer's notice, and suggested that perhaps it was signed by the seller or the realtor. The respondent testified they had never seen the buyer's notice until it was presented by the tenant. The respondent testified that their address listed on the Two Month Notice is incorrect.

The tenant testified that the respondent's family did not live in the property for at least six months after purchasing it. The tenant submitted that the purchasers bought the unit then "flipped it" a short time later, at a profit.

The respondent testified that the close family member who occupied the rental unit was IS, and his family, and that they lived in the unit for two months while renovating it, immediately after the purchase. The respondent did not clarify how they are related to IS. The respondent also testified that IS moved out just prior to the sale of the home, in February 2022.

The respondent testified that the house was sold because they and the two other purchasers got into a disagreement they could not resolve.

The respondent submitted no documentary evidence, and called no witnesses.

### Analysis

I find that the tenant moved out on September 30, 2021 as a result of being served the Two Month Notice.

The respondent has testified that she was not aware of the service of the Two Month Notice on the tenant, and that she did not sign the buyer's notice. While I acknowledge this could be the case, I find on a balance of probabilities, meaning more likely than not, that the respondent had knowledge of the Two Month Notice and the buyer's notice, and that they were given to the tenant.

Section 51(2) of the Act states:

(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 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.

[Policy Guideline 2A](#): *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides that:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Section 49 provides the following definition:

- "close family member"** means, in relation to an individual,
- (a) the individual's parent, spouse or child, or
  - (b) the parent or child of that individual's spouse;

Section 51(3) permits an arbitrator to excuse a landlord if, in the arbitrator's opinion, extenuating circumstances prevented the landlord 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.

The respondent has provided conflicting testimony on when IS occupied the rental unit, stating that it was for two months after the July 2021 purchase, and also stating IS

moved out just before the February 2022 sale of the property. The respondent also did not explain how they are related to IS.

I cannot find the respondent experienced circumstances beyond her control that prevented her, or her close family member as defined by section 49, from occupying the rental unit for six months. The respondent testified that the property was sold after she and the other two purchasers had a disagreement they could not resolve. The respondent did not explain how this prevented her or her close family member from occupying the unit for six months.

The respondent submitted no documentary evidence and called no witnesses in support of her claim.

Based on the respondent's affirmed testimony, I find she has failed to prove that following the purchase of the rental unit, the respondent or a close family member, as defined by section 49, occupied the rental unit for a minimum of 6 months. I find the respondent has not met her obligation under the Act, so pursuant to section 51(2), owes the tenant 12 times the monthly rent of \$2,000.00 payable under the tenancy agreement: \$24,000.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the respondent to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of \$24,100.00, comprising the filing fee and 12 times the rent.

### Conclusion

The tenant is granted a monetary order for \$24,100.00. The monetary order must be served on the respondent. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 17, 2023

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Residential Tenancy Branch