



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      MNETC FFT

### Introduction

The Tenant seeks compensation in the amount of \$23,800.00 pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”). They also seek compensation to recover the cost of the \$100.00 application filing fee, pursuant to section 72(1) of the Act.

### Issue

Is the Tenant entitled to compensation pursuant to sections 51(2) and 72(1) of the Act?

### Background and Evidence

In reaching this decision, I have considered all of the parties’ evidence and submissions, but I only refer to what is necessary to explain my decision.

It should be noted that the Tenant submitted various documentary evidence, all of which was served upon the Landlords with the exception of a property listing and selling record. The Tenant testified under oath that he served this document upon the Landlords, but the Landlords denied that they ever received it. However, this document supports facts that are not in dispute.

The tenancy began on September 11, 2020 and ended on August 31, 2021. Monthly rent was \$1,990.00. A copy of a written Residential Tenancy Agreement was in evidence. The tenancy agreement indicates that the tenancy was a fixed-term tenancy which ended on August 31, 2022 and then was to continue as a month-to-month tenancy thereafter.

The tenancy was ended by way of an undisputed Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”). The Notice was served on the Tenant on June 30, 2022 and the effective date on which the tenancy would end was August 31, 2022.

The stated reason for the Notice being issued was, as indicated on page two of the Notice, that the rental unit would be occupied by the father or mother of the landlord or the landlord's spouse. A copy of the Notice, along with a Proof of Service document, were presented into evidence by the Tenant.

The particulars of the Tenant's claim are as follows (reproduced as written):

My landlord did not follow through with the reason for my eviction: The rental unit will be occupied by the landlord or the landlord's close family member. However, the rental unit is not used for the stated purpose for at least six months since the property was listed for selling on Dec-2021 and was sold on Feb-2022. As a result, my landlord should owe me 12 months of my previous rent as compensation (\$1990 x 12 months = \$23880).

The Tenant testified that he happened to search the internet for the address of the rental unit and discovered that it was listed for sale in early December 2021 and sold on February 22, 2022. The Tenant argued that the rental unit was not used for the stated purpose and that this was not done so within a six month period after August 31.

The Landlord (Y.N.) testified under oath that they did indeed list the property for sale in December 2021 and that they sold it on February 22, 2022. However, the Landlord testified that the circumstances were as follows: the Landlords' parents did move into and occupy the rental unit in early September 2022. Unfortunately, due to the Landlord's husband's poor health and loss of income, he was unable to continue caring for the parents. And so, the parents moved out of the rental unit and back with the Landlord's sister. The family was struggling for almost a month and the Landlords made the "very hard decision" to sell the property.

The Landlord testified that they were unable to make ends meet and listed the property. Eventually, the house was sold on February 22, 2021. The Landlord pointed out that this was, in any event, only six days before the end of the six-month period to which the Tenant had made this application. She reiterated that her husband the co-Landlord lost his ability to make income.

In rebuttal, the Tenant argued that the husband Landlord was "going fine" right up until the Tenant vacated the property. And he argued that the Landlord's employment status would not have affected the family's situation. The Tenant also submitted that the tenancy *may* have been ended because of the eventual profit that could have been made on the sale of the property.

## Analysis

This application is made pursuant to section 51(2) of the Act, which 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

- (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.

There is no dispute that the rental unit was not used for the stated purpose for at least six months' duration after the effective date of the Notice. (Neither party made any argument nor provided any submissions regarding what a "reasonable period" ought to have been.) The tenancy ended August 31, 2021 and the rental unit was sold on February 22, 2022: six days before the six month period ended on February 28, 2022.

In any event, the stated purpose for ending the tenancy—that is, so the parents could occupy the rental unit—appeared to have ended much earlier due to the parents moving out before the six month period drew to a close. Thus, in taking into consideration all of the evidence before me, it is my finding that the Landlords have not established on a balance of probabilities a situation under subsection 51(2)(a) or (b) of the Act.

Having found that the Tenant is *prima facie* entitled to compensation under section 51(2) of the Act, I must however consider subsection 51(3) which states 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.

In this dispute, the Landlord testified that the parents occupied the rental unit for a period of time, but then moved back with another family member. The Landlord also testified that the property had to be sold due to the husband's lost ability to make income and that the family was unable to make ends meet.

While much was said by both the Tenant and the Landlord about the husband's income and the financial situation surrounding the period after the Tenant vacated the rental unit, what was not addressed was why the parents did not occupy the rental unit for the entire six month period. It must be remembered that the stated purpose for ending the tenancy was so that the Landlords' parents could occupy the rental unit. That is the reason for which extenuating circumstances must have occurred to have prevented the Landlords from meeting the six-month requirement under either subsection 51(3)(a) or (b) of the Act.

It is not lost on me that the pandemic wrought difficulty upon so many people. This case was no different, and the Landlord testified about the various health complications of various people. This included the Landlord's sister who was burned out and stressed. And it included the Landlord's husband's own health complications. However, I am not satisfied that the Landlords have proven that there were extenuating circumstances that, despite the various health issues of the various parties, and despite a possible loss of income, prevented the Landlords' parents from occupying the rental unit for a minimum period of at least six months.

For these reasons, I must find that the Landlords cannot be excused from compensating the Tenant pursuant to section 51(2) of the Act. The Landlords are therefore ordered to pay \$23,880.00 to the Tenant.

Under section 72 of the Act, an arbitrator can order one party to pay a fee to another party in a dispute resolution proceeding. Typically, when an applicant is successful in their application, the respondent is ordered to pay an amount equal to the applicant's filing fee. In this case, since the Tenant was successful, the Landlords are ordered to pay the Tenant \$100.00.

A copy of a monetary order is issued with this decision to the Tenant. The Tenant must serve a copy of the monetary order upon the Landlords.

Conclusion

**The application is granted.**

A monetary order is issued with this Decision to the Tenant. And the Tenant is required to serve a copy of the monetary order upon the Landlords.

This decision is made on delegated authority under section 9.1(1) of the Act.

A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: March 2, 2023

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Residential Tenancy Branch