



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenants and the respondents shown above attended the hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlords confirmed receiving the tenants' evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

At the beginning of the hearing, the respondent asked to delay the hearing. The respondent said that in May 2022, their son had a medical condition and since that time, the respondents have been unable to focus due to their son's ongoing condition. The respondent explained that was the reason they did not provide evidence for the hearing and would like a delay in order to provide evidence.

The request for a delay, or adjournment, was declined. The tenants' application was filed on June 30, 2022, the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was provided to the tenants by the RTB to serve on the landlords on July 14, 2022, and the tenants' evidence shows that the respondents were served the application package by registered mail. I find this was more than ample time for the respondents to have prepared their evidence to file for this dispute.

Apart from that, the respondents provided no evidence to show the extent of the son's medical condition or explain how it prevented them since July 2022 from preparing evidence for this hearing.

I find a delay in the proceedings would be procedurally unfair to the tenants as their application was made in June 2022.

Initially, the respondent also said they did not receive the tenants' application, although they confirmed that they received the tenants' evidence. The tenant confirmed that their evidence was filed with their application, and I note that all evidence from the tenants was uploaded with their application at the RTB. I therefore find the tenants submitted sufficient evidence to show that their application was included with their evidence that the respondent confirmed receiving.

Additionally, the listed landlord, JF, is an agent of the property management company representing the tenants' original landlord and whose company issued the 2 Month Notice to the tenants. The respondent, DM, appeared at the hearing on behalf of the property management company as JF was unable to attend.

As the property management company acted on behalf of the tenants' original landlord/seller, I find they are not responsible for the 2 Month Notice and therefore I have excluded JF from any further consideration in this matter and any resulting financial obligations.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

Although no written tenancy agreement was filed in evidence, the tenant stated that their tenancy began in March 2019 and ended on April 15, 2022, in response to the 2 Month Notice. The tenants said that the monthly rent at the end of the tenancy was \$2,842. Filed in evidence was a notice of rent increase issued to the tenants by the property management company representing the landlord at the time. The monthly rent was increased to \$2,842, effective January 1, 2022.

The tenants' monetary claim is \$31,262.

The tenants wrote in their application the following:

*The house we were renting was sold , in February 2022 we received a 2 month eviction notice to end tenancy to be out by April 30 2022 from the new owners for Landlord's use of property. Because the purchaser or a close family member intended to move in , In Good faith to occupy the rental house I was looking on market place and found that the house at (house number) was up for rent available June 1st 2022 . New renters were in the house by June 1st 2022*

[Reproduced as written except for anonymizing personal information to protect privacy]

When asked to clarify their monetary claim, the tenant explained that they were told by a tenant group that they were entitled to 11 months' compensation.

The undisputed evidence is that the tenant's former landlord issued the tenants a 2 Month Notice for Landlord's Use of Property (Notice) at the request of the purchaser for vacant possession. Filed in evidence was a copy of the Notice.

The Notice was dated February 4, 2022, listing an effective move-out date of April 30, 2022, with the reason being that the "*conditions of 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 tenants accepted the Notice as they vacated on April 15, 2022.

Also filed in evidence was a copy of the written request signed by the respondent, ASB, which was on a standard form from the BC Real Estate Association. The document was titled, "TENANT OCCUPIED PROPERTY-BUYERS NOTICE TO SELLER FOR VACANT POSSESSION".

In response to the tenants' claim, the respondent proceeded first in the hearing.

The respondent, AKB, said that they never moved into the rental unit, explaining that they had put their own home up for sale, but due to the changing market conditions, their home was not sold. For this reason, they terminated their listing and decided to stay in their current home. The respondent said the change in market conditions meant they could not sell their own home at the time.

The respondent said that in April 2022, they had asked their agent to contact the tenants' agent to inform the tenants they could remain in the rental unit. There was never a response from the tenants.

The respondent confirmed that the rental unit was re-rented in June 2022, for a monthly rent of \$3,700.

The respondent confirmed that they did not make selling their own existing home a condition of sale.

In response, the tenants said they were never contacted by the landlord.

The tenants' evidence included rental ads for the rental unit and videos of new tenants moving in.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the case before me, the undisputed evidence is that the tenants' landlord on February 4, 2022 issued the tenants a 2 Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(5) of the Act, for a final, effective move-out date of April 30, 2022. The tenants complied with the Notice and vacated by April 15, 2022.

The landlord marked on the Notice that all 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 close family member intend in good faith to occupy the rental unit. The respondent was listed on the Notice as the purchaser.

Tenancy Policy Guideline 50 (Guideline) states that the landlord, or where applicable, the purchaser has the burden to prove they accomplished the stated purpose within a reasonable period after the effective date of the notice.

Section 51(2) of the Act provides that the landlord or purchaser who asked the landlord to give the notice to end the tenancy, **must** pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord, or purchaser, 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 that the rental unit 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.

*[My emphasis]*

As the respondents/purchasers confirmed that they never moved into the rental unit and instead, advertised for new tenants for a higher monthly rent than the tenants were paying, I find the rental unit was not used for the stated purpose. I therefore find the landlord must pay the tenant the amount of \$34,104, the equivalent of 12 times the monthly rent at the end of the tenancy of \$2,842.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenants the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Tenancy Policy Guideline 50E outlines 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 one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes 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.

In these circumstances, I find the respondent submitted insufficient evidence to show the matters could not be anticipated or were outside the respondent's control.

The respondent said they did not move in because they could not sell their own home and terminated the listing. The respondent confirmed that they did not make selling their own existing home a condition of sale.

I therefore find that these matters could have been anticipated and were within the respondents' control as removing the listing for their own home, I find, was a choice.

Additionally, the evidence shows that the respondents still took ownership of the residential property and the respondents had the option of moving into the rental unit and then rent out their existing home.

For the above reasons, I therefore find the respondents submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

For the above reasons, I therefore find the respondent must pay the tenants monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice and had no extenuating circumstances.

As a result, I grant the tenants a monetary award of \$34,104, which is the equivalent of the monthly rent of \$2,842 for 12 months. I note that while the tenants made an error in their monetary claim, which they listed as \$31,262, the Act is not discretionary, as the Act states the purchaser must pay the compensation equivalent to 12 months rent.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary order (Order) of **\$34,204** against the respondent, the equivalent of monthly rent of \$2,842 for 12 months, or \$34,104, and the cost of the filing fee of \$100.

Should the respondent fail to pay the tenants this amount without delay, the tenants must serve the Order on the respondent for enforcement purposes by means under section 88 of the Act. The respondent is informed that costs of such enforcement are recoverable from the respondent.

### Conclusion

The tenants' application for monetary compensation is granted for the above listed reasons. The tenants have been granted a monetary order for **\$34,204**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 22, 2023

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Residential Tenancy Branch