

## **DECISION**

Dispute Codes      **MNETC, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlords to reimburse the tenant for the filing fee pursuant to section 72.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

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### Issue(s) to be Decided

Is the tenant entitled to the relief requested?

### Background and Evidence

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

The relevant and important aspects of the claims and my findings based on submitted, relevant and admissible evidence are set out below.

The tenant claimed compensation of 12 times the rent for the unit they rented (for a total claim of \$22,800.00) as the landlord did not occupy the unit as required under the Act.

The landlord denied the tenant's claim. The landlord stated the unit was occupied by a landlord, that is the landlord's brother, within a reasonable time after the tenant vacated in compliance with the Act. The landlord requested the application be dismissed.

### *Tenancy Agreement*

The tenant submitted a copy of the tenancy agreement. The tenant testified they rented a house from the landlord for 8 years.

The parties agreed they had a tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	May 1, 2013
Vacancy Date	October 1, 2021
Rent payable on first of month	\$1,900.00
Security deposit	\$825.00 (returned)
Pet deposit	\$500.00 (returned)

### *Two Month Notice*

The parties agreed the landlord issued and served a Two Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	July 19, 2021
Effective Date of Notice	October 1, 2021
Date and Method of Service	July 19, 2021, acknowledged
Reasons for Issuance	Occupancy by child of landlord, or mother or father of landlord, or landlord's spouse

The tenant submitted a copy of the Two Month Notice which is in the standard RTB form. The landlord is the sole named landlord. The tenant did not dispute the notice.

The Notice states:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent of that individual's spouse).

Please indicate which family member will occupy the unit. *(Each of the following is checked):*

The landlord or the landlord's spouse

The child of the landlord or the landlord's spouse

The father or mother of the landlord or the landlord's spouse

The upper portion of page 2 of the 2 Month Notice stated:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input checked="" type="radio"/>	The father or mother of the landlord or landlord's spouse

The tenant SE testified as follows. Further to the Notice, the tenant moved out on October 1, 2021. The 6-month period therefore ended April 1, 2022. In April 2022, she attended at the unit three times for her mail looking for a missing T4. On all three occasions, the door was answered by a woman who could not speak English. On the third occasion the woman called a man on the phone who spoke with SE. SE testified the speaker identified as the renter of the house. The son spoke to SE and confirmed SE had mail there. He said the woman who answered the door was his mother. In response to her enquiries, the son informed her that he rented the entire house (both the upstairs unit occupied by the tenant and the downstairs unit rented by the tenant to a third party). The man stated he was not related to the landlord. The tenant stated she did not ask for the man's name.

The landlord testified as follows. The house is owned by him and his 3 brothers, all of whom appear on the title. The landlord did not submit any evidence or call any witnesses to corroborate this statement. One of his brothers, RG, lives in the house with his wife. The landlord explained that the woman who answered the door to SE was a "paying guest" of RG.

The landlord submitted the following documentary evidence which included the unit's address:

1. BC Hydro bill for December 11, 2011 to February 10, 2022 in name of RG
2. Fortis bill dated December 2, 2022, in name of RG
3. City utilities bill for July/August and November 2022 in name of RG
4. Covering letter for the landlord's and JG [sic] tax return for 2022

The landlord did not provide an explanation for the identity of JG named in # 4 above.

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As stated, the tenant vacated October 1, 2021. The landlord did not provide documentary evidence of occupancy for the remainder of the 6 month period other than the above. The landlord called no witnesses.

In summary, the landlord claimed his brother RG, a co-owner, had moved into the unit shortly after the tenant moved out and continued to live there. The landlord requested the application be dismissed without leave to reapply.

The tenant claimed the landlord has not established that anyone else is a landlord. They claimed the occupant was a person (with his mother) who rented the entire house and was not related to the landlord.

The parties provided considerable conflicting evidence. Not all asserted facts and arguments are referenced in this Decision. I refer to only selected, key, admissible and relevant evidence upon which my findings are based.

### Analysis

#### *Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility.

A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I have carefully reviewed the evidence. I find the tenant's version of events to be most in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find the landlord's evidence to be confusing and contradictory. The landlord submitted no documentary evidence to support his claim that the occupant of the unit was his brother who was also a landlord. I find it more likely than not, that the person with whom the tenant SE spoke in April 2022, reliably told her he rented the entire house and was not related to the landlord.

I find the documents submitted by the landlord not to be conclusive of an assertion that the landlord's brother occupied the unit for the six months after the tenant moved out. The landlord issued the Two Month Notice. The landlord has submitted no evidence of co-owners or other landlords.

I conclude the landlord's testimony is not reliable or credible. Where the parties' evidence differs, I give greater weight to the tenant's version of events.

### *Burden of Proof*

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove any alleged extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position.

Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find the landlord has not met the burden of proof. My findings are set out below.

*The Act – “Landlord”*

The definition of a “landlord” is in section 1:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Section 49(1) states:

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and

The landlord acknowledged he is a landlord within the meaning of the Act.

I find the landlord has not met the burden of proof that his brother is a landlord.

He has not established the above definitions apply to any one else.

### *Two Month Notice*

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) makes it clear that, on an application for dispute resolution by a tenant for compensation that is equivalent to 12 times the monthly rent, it is the landlord who must establish, on a balance of probabilities, the rental unit has been used for the stated purpose for at least 6 months', beginning within a reasonable period after the effective date of the notice.

Section 51 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.



I do not accept the landlord's unsupported testimony that his brother is a landlord on whose behalf he issued the Two Month Notice. I also do not find the brother moved into the unit. These assertions are not supported by any documentary evidence or witnesses.

I find it more likely than not that the house was rented to someone unrelated to the landlord. I accept the tenant's testimony and reject the landlord's unlikely explanation.

Therefore, I find section 51(2) of the Act applies.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant 12 times the monthly rent which I calculate to be \$22,800.00.

As the tenant is successful in this application, the tenant is entitled to reimbursement of the filing fee of \$100.00 for a total Monetary Order for \$22,900.00.

### Conclusion

The tenant is granted a Monetary Order in the amount of \$22,900.00.

This Monetary Order must be served on the landlord. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC.

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 20, 2023

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Residential Tenancy Branch