



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on a Two Month Notice to End tenancy for Landlord's Use of Property ("Two Month Notice"), as provided under section 51 of the Act.

Both parties appeared for the hearing and were affirmed. The tenant was also assisted by legal counsel. The landlord's called their son as a witness during the hearing. The landlord's son was affirmed and subject to direct examination and cross examination.

The hearing was held over two dates. An Interim Decision was issued on November 1, 2022 and should be read in conjunction with this decision.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Issue(s) to be Decided

Did the landlords use the rental unit for the purpose stated on the Two Month Notice? If not, did extenuating circumstances prevent the landlords from doing so? Is the tenant entitled to the compensation payable under section 51(2) of the Act, as claimed?

### Background and Evidence

The tenancy started on May 1, 2020. The tenant vacated the rental unit on September 29, 2021. At the end of the tenancy the monthly rent was \$1850.00, due on the first day of every month. The rental unit was described as being a two bedroom condominium unit in a strata building.

The landlords served the tenant with the subject Two Month Notice on July 29, 2021 to be effective September 30, 2021. The reason for ending the tenancy, as stated on the Two Month Notice served to the tenant, was that the "landlord or landlord's spouse" intended to occupy the rental unit. The tenant initially filed to dispute the Two Month Notice but decided to accept the tenancy would end pursuant to the Two Month Notice and notified the landlord of such.

After the tenancy ended, the tenant heard that the landlords did not move into the rental unit and the tenant began making enquiries with building management as to who was occupying the rental unit.

The tenant proceeded to file this claim, seeking compensation of \$22,200.00 which is the equivalent to 12 months of rent.

### **Landlord's position**

The landlords testified that it was their intention for them and their son and their son's girlfriend to move into the rental unit when they issued the Two Month notice to the tenant; however, such a reason is not provided on the Two Month Notice so they just indicated that the landlords would be moving in.

I heard that the landlords were living in a recreational vehicle October 2021 and then they moved into the rental unit. The landlords also wanted to help their son save money so that is why they asked their son to move into the rental unit as well. At that time the landlords did not complete a Form K for the strata because they did not think they had to if they were residing in the rental unit.

In November 2021 the male landlord went to house-sit elsewhere but the female tenant stayed in the rental unit with her son until January 2022. In January 2022 the female landlord went to stay with her husband and they house-sit together until April 2022 when they moved to a different property they own. After the female landlord moved out of the rental unit, a cousin of their son's girlfriend (referred to as "G") moved into the rental unit with the landlord's son and his girlfriend.

In February 2022 the building manager asked the landlord to complete a Form K after the tenant started making enquiries as to who was residing in the rental unit. The landlords listed their son as an occupant on the Form K. The landlords submit their son continues to occupy the rental unit.

### **Landlords' son's testimony**

The landlords' son was called to testify.

The landlords' son testified that he moved into the rental unit in October 2021. The landlords' son described how it was a last minute decision to move into the rental unit when his parents offered him a free room in late September 2021. He accepted their offer since the rent was free and there was a renovation taking place at the other property. The landlords' son stated that he continues to live in the rental unit with his girlfriend.

The landlords' son testified that his parents had lived in the rental unit with him for a couple of months and with some prompting from the female landlord, the landlords' son testified that G moved in with him for the months of February 2022 through to approximately June or July 2022.

The landlords argued that they had communicated to the tenant that they would be moving into the rental unit, they served the tenant with the proper notice to end tenancy and they did move into the rental unit shortly after the tenancy ended. The landlords' son moved into the rental unit, as reflected on the Form K and the tenancy agreement they signed with their son, and their son continues to reside in the rental unit. The landlords are of the position they have done everything correctly and the tenant is merely seeking money and looking to have a dispute with them.

### **Tenant's position**

The tenant's legal counsel pointed out that the landlords bear the burden to prove they occupied the rental unit for the required time period and they failed to show that. Nor did the landlords indicate that an extenuating circumstance prevented them from doing so.

The tenant's legal counsel pointed out that a landlord may not switch one reason for ending a tenancy for another reason, even if the other reason would have qualified to end the tenancy, in keeping with Policy guideline 50. As such, at least one of the landlords remained obligated to occupy the rental unit for at least six months after the tenancy ended and their own evidence demonstrates that they did not.

The tenant's legal counsel questioned who actually resided in the rental unit, considering the landlord's son had to be prompted by the landlord to tell him when his roommate G resided with him and the landlords did not produce documentary evidence other than that they created themselves, such as utility bills. Further, the landlord's email to the building manger on February 7, 2022 appears to demonstrate the occupancy of the rental unit was subject to change when the landlord wrote to the building manager in response to his request for a Form K:

“Our son [name of son] and his girlfriend [name of girlfriend] are living there. [G] is also living there right now or it's [male landlord's name] and myself. I will fill out a form.”

The landlord produced a Form K, signed in March 2022, which indicates a tenancy started on October 1, 2021 with the landlord's son and his girlfriend and G.

The landlord responded that she did not intentionally prompt her son during his testimony about G for any reason other than it was her motherly instinct to help him. The landlord also stated that the utility bills were always in the landlord's name, even when the tenant resided in the rental unit, and that did not change so the landlords did not provide utility bills.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Where a tenant receives a *Two Month Notice to End Tenancy for Landlord's Use of Property* (“Two Month Notice”) under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

It is undisputed that the tenant was served with a Two Month Notice in July 2021 to be effective September 30, 2021.

By way of this application, the tenant is seeking compensation payable under section 51(2) of the Act, which provides:

(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.

Subsection (3) provides for mechanism to excuse the landlord from having to pay the compensation provided under section 51(2) due to “extenuating circumstances”. Below, I have produced subsection (3):

(3) 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 the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) 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.

Below is an image of the section of the subject Two Month Notice issued by the landlords and served to the tenant that provides the reason they are ending the tenancy:

**Reason for this Two Month's Notice to End Tenancy (check the box that applies)**

☒ 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.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

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

☐ The landlord is a family corporation and a person owning, voting, shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☐ 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 tenant no longer qualifies for the subsidized rental unit.

The Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences where a landlord ends a tenancy for stating one reason on a Two Month Notice and then not fulfilling the stated reason. The requirement to pay the tenant additional compensation is intended to be a deterrent to ending a tenancy under false pretenses or for ulterior motives and in many cases, it provides an offset to the tenant often having to pay higher rent elsewhere. The spirit of the Act is to preserve existing tenancies except in limited and specific circumstances.

The tenant called into question whether the landlords occupied the rental unit for at least six months starting within a reasonable amount of time after the tenancy ended. Where a tenant makes an application under section 51(2) of the Act, the landlord's bear the burden to prove they used the rental unit for the purpose stated on the Two Month Notice for the required amount of time. Residential Tenancy Policy Guideline 50 sets out this burden, as seen below:

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

*Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

The landlord's own testimony was that both landlords moved into the rental unit shortly after the tenancy ended. It is also the landlord's own testimony that starting in January 2022 neither of the landlords were residing in the rental unit and in February 2022 "G" moved into the rental unit. The landlords further testified that they never returned to live in the rental unit after they finished house-sitting because they moved to another property they own. Based on the landlord's own testimony, I find it is clear that the landlords, or at least one of them, only occupied the rental unit for four months: October 2021 through January 2022. Therefore, the landlords did not occupy the rental unit for at least six months after the tenancy ended.

The landlords submitted that their son was living in the rental unit shortly after the tenancy ended and that he continues to occupy the rental unit; however, I find it unnecessary to determine whether that is accurate or not since the landlords did not state on the Two Month Notice that they were ending the tenancy so that their son could occupy the rental unit.

The landlords submitted during the hearing that it was their intention to have themselves and their son occupy the rental unit when they issued the Two Month Notice; however, I find that position contradicts their son's testimony that he decided to move into the rental unit at the "last minute" on or about September 29, 2021. Nor did the landlords make any indication on the Two Moth Notice that their son would be occupying the rental unit or that both the landlords and their son would be occupying the rental unit. Accordingly, I find the landlord's purported intention, as stated on the Two Month Notice, was that they would occupy the rental unit themselves after the tenancy ended and I find they were obligated to fulfill that purpose by residing in the rental unit themselves.

Residential Tenancy Policy Guideline 2A provides information and policy statements with respect to a landlords' good faith intention to end the tenancy for landlord's use of property, including the following section:

***6-month occupancy requirement***

*The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).*

I find the above statement is consistent with the Two Month Notice itself, in requiring the landlord to identify the specific party that intends to occupy the rental unit, and Residential Policy Guideline 50 where it states that the stated purpose on the Two

Month Notice must be fulfilled so as to avoid compensation payable under section 51(2). Below, I have reproduced the relevant section of Residential Tenancy policy Guideline 50:

***Accomplishing the Purpose/Using the Rental Unit***

*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**... 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.*

[My emphasis underlined and in bold]

Given all of the above, I find the landlords were obligated to ensure at least of the owners resided in the rental unit for at least six months after the tenancy ended, and their evidence demonstrates they did not. Therefore, I find the tenant entitled to the additional compensation provided under section 51(2) of the Act, as requested, in the amount of \$22200.00 [\$1850.00 x 12 months].

The landlords did not indicate or present any evidence to suggest an “extenuating circumstance” prevented the landlords from residing in the rental unit for at least six months and I do not consider excusing the landlords from paying the additional compensation.

Given the tenant’s success in this application, I further award the tenant recovery of the \$100.00 filing fee paid for this application.

Provided to the tenant with this decision is a Monetary Order in the amount of \$22300.00 to serve and enforce upon the landlords.



Conclusion

The tenant was successful in this application and is provided a Monetary Order in the sum of \$22300.00 to serve and enforce upon the landlords.

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