



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNETC, FFT

### **Introduction**

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on August 18, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch prior to August 14, 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and this evidence was accepted as evidence for these proceedings.

On April 10, 2023 the Tenant submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was sent to the Landlord, via registered mail, on April 11, 2022. The Agent for the Landlord stated that this evidence was received and the Landlord has had sufficient time to consider the evidence. As such, this evidence was accepted as evidence for these proceedings.

On March 29, 2023 the Tenant submitted an image of a religious excerpt. The female Tenant stated that she did not intend to submit this image as evidence for these proceedings. She stated that she intended to submit photographs that were also submitted to the Residential Tenancy Branch on April 10, 2022. As that evidence has already been accepted as evidence for these proceedings, I find it is not necessary for me to consider that evidence again.

On April 10, 2023 the Landlord submitted documents to the Residential Tenancy Branch, which appear to be evidence to prove service of documents. The Agent for the Landlord stated that the Landlord also intended to submit 13 pages of evidence to the Residential Tenancy Branch on April 10, 2023.

The Agent for the Landlord stated that their 13 pages of evidence was posted on the Tenants' door on April 10, 2023. The female Tenant stated that these 13 pages were received by the Tenants. As the Tenants received these documents and they were likely not properly uploaded to the Residential Tenancy Branch due to human error, the parties were advised that the Landlord could re-submit those identical 13 pages to the Residential Tenancy Branch by the end of the day on April 26, 2023.

The Landlord uploaded 13 pages of evidence to the Residential Tenancy Branch on April 25, 2023 and they were considered as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord and the Tenant agree that:

- the rental unit was vacated on January 31, 2022;
- when the tenancy ended the monthly rent was \$1,700.00;

- on October 12, 2021 a Two Month Notice to End Tenancy for Landlord's Use of Property was personally served to the Tenant;
- the Two Month Notice to End Tenancy for Landlord's Use of Property declared that the unit must be vacated by January 31, 2022; and
- the Two Month Notice to End Tenancy for Landlord's Use of Property declared the tenancy was ending because it would be occupied by the child of the Landlord or the Landlord's spouse.

The Agent for the Landlord stated that:

- when the Two Month Notice to End Tenancy for Landlord's Use of Property was served, he and his family planned to move into the unit to help care for his mother, who was having health problems;
- his mother and father live in the lower portion of the residential complex;
- his mother's health improved after the Two Month Notice to End Tenancy for Landlord's Use of Property was served;
- he and his sister determined that his sister could care for their mother, given her improved health, without the Agent for the Landlord moving to the unit;
- as his mother's health improved, his mother-in-law's health deteriorated;
- his mother-in-law was living near him when the Two Month Notice to End Tenancy for Landlord's Use of Property was served;
- his family made the difficult decision of staying near his mother-in-law, to aid with her health care needs;
- the rental unit remained vacant between January 31, 2022 and August 06, 2022; and
- while the unit was vacant, the Landlord made some cosmetic upgrades.

The male Tenant stated that the unit appeared vacant from the time they moved out of the unit until August of 2023, although it appears some renovations were occurring.

Much of the testimony provided in the Landlord's written submission was given by the Agent for the Landlord at the hearing. Additional relevant information provided in the Landlord's written submission, :

- after the rental unit was vacated, the Landlord determined that the unit would be upgraded before the Agent for the Landlord moved in;
- the upgrades were completed in mid-April of 2022;
- by the time the upgrades were completed in mid-April of 2022, the Landlord's wife's healthy was improving;

- because of the wife's improving health the Agent for the Landlord delayed moving into the unit to allow his children to complete their school year;
- the Agent for the Landlord's mother-in-law became ill in June of 2022; and
- in July of 2022 the Agent for the Landlord decided not to move into the unit so that he could be closer to his mother-in-law to assist with her health care.

### Analysis

On the basis of the undisputed evidence, I find that:

- the Tenants were paying monthly rent of \$1,700.00 at the end of this tenancy;
- the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, that required them to vacate the rental unit by January 31, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use of Property declared that the unit would be occupied by the child of the Landlord or the Landlord's spouse;
- the rental unit was vacated on January 31, 2022;
- when the Two Month Notice to End Tenancy for Landlord's Use of Property was served, the Landlord's son and his family planned to move into the unit to help care for his mother, who lives in the lower portion of the complex and was having health problems;
- after the unit was vacated, the Landlord completed some upgrades to the unit;
- the Landlord's child did not move into the rental unit after January 31, 2022; and
- the unit was rented to a third party in August of 2022.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As it is clear that the Landlord's child did not move into the rental unit after January 31, 2022 and the unit was rented to a third party in August of 2022, I find that the Landlord is subject to the penalty imposed by section 51(2)(a) of the *Act*. I therefore find that the Landlord must pay the Tenant, \$20,400.00, which is 12 times the monthly rent.

Section 51(3) states the landlord may be excused from paying the tenant the amount

required by section 51(2) if 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, 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.

Typically, the onus of proving their case is on the person making the claim. In some situations, the onus of proof is on the other party. For example, the landlord must prove they have grounds to end the tenancy when a tenant applies to cancel a Notice to End Tenancy. Similarly, when a landlord claims there are extenuating circumstances that prevent the landlord from occupying a unit after serving a Two Month Notice to End Tenancy for Landlord's Use of Property for that purpose, the onus is on the landlord to prove the extenuating circumstances.

Residential Tenancy Branch Policy Guideline 50 reads, in part:

*The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.*

*These are 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.*
- *A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

*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.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord making a personal or financial decision.

I find that the Landlord should not be excused from paying the penalty imposed by section 51(2), as I am not satisfied that the Landlord has established that extenuating circumstances prevented his son from moving into the unit.

I find that the Landlord elected to end this tenancy so his son could move closer to his mother, to assist with her health care needs. I find that the Landlord submitted no medical evidence to establish there was an unexpected, marked improvement in the mother's health. Similarly, I find that Landlord submitted no medical evidence to establish that his son's mother-in-law experienced an unexpected decline in her health.

I find that the Landlord's son made a personal decision to not move into the rental unit. In the absence of medical evidence that establishes there was an unexpected, marked change in the health of his mother or his mother-in-law, I cannot conclude that something occurred that was outside of the son's control. I therefore cannot conclude that the son's decision to stay near his mother-in-law constitutes extenuating circumstances that would cause me to excuse the Landlord from the penalty imposed by section 51(2)(a) of the *Act*.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution.

## Conclusion

I find that the Tenants have established a monetary claim of \$20,500.00, which is comprised of \$20,400.00 for compensation pursuant to section 51(2)(a) of the Act and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$20,500.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 26, 2023

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Residential Tenancy Branch