



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenant's application, filed on July 6, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$15,600.00 for 12 months' rent compensation because the tenant's tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 28, 2021, and effective January 31, 2022 ("2 Month Notice"), and the purchasers have not complied with the Act or used the rental unit for the stated purpose, pursuant to section 51.

The two purchasers, "purchaser GS" and "purchaser JK," the purchasers' agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 72 minutes from 1:30 p.m. to 2:42 p.m.

At the outset of this hearing, I asked the purchasers to remove their telephone from speakerphone because it was causing echoing and feedback, making it difficult for me to hear. The purchasers' agent argued that the purchasers could not hear if they removed it from speakerphone. He claimed that the purchasers could not call in from separate telephones in separate rooms because they did not have separate telephones. He agreed to remove the telephone from speakerphone and hand the telephone to each of the purchasers if they wanted to testify individually at this hearing.

I repeatedly cautioned the purchasers' agent about interrupting me, speaking at the same time as me, and arguing with me, during this hearing.

All hearing participants confirmed their names and spelling. The tenant and purchaser JK provided their email addresses for me to send copies of this decision to both parties after this hearing.

The purchasers confirmed that their agent had permission to represent them. They identified him as their primary speaker at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential consequences and outcomes, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties engaged in settlement discussions during this hearing but declined to settle.

I repeatedly cautioned the tenant that if I dismissed her application without leave to reapply, she would receive \$0. The tenant affirmed that she was prepared for the above consequences if that was my decision.

I cautioned the purchasers that if I granted the tenant’s entire application, they would be required to pay the tenant \$15,600.00 total. The purchasers affirmed that they were prepared for the above consequences if that was my decision.

The purchasers’ agent confirmed receipt of the tenant’s application for dispute resolution hearing package. The tenant confirmed receipt of the purchasers’ evidence. In accordance with section 88 and 89 of the *Act*, I find that both purchasers were duly served with the tenant’s application and the tenant was duly served with the purchasers’ evidence.

The tenant confirmed receipt of the former landlord’s 2 Month Notice. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the former landlord’s 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to change the city of the rental unit address, to change purchaser JK's surname, and to remove the tenant's minor daughter as a tenant-applicant party. I also amend the tenant's application to reduce the tenant's monetary claim from \$19,200.00 to \$15,600.00. The tenant consented to the above amendments during this hearing. Neither the purchasers, nor their agent, objected to same. I find no prejudice to either party in making the above amendments.

The tenant agreed that she was paying rent of \$1,300.00 per month, to the former landlord at the end of this tenancy at the rental unit, which totals \$15,600.00 for 12 months' rent compensation. The tenant agreed that she applied for compensation of \$19,200.00 based on her new rent of \$1,600.00 per month, which she pays to a new landlord for a new rental unit, not related to this tenancy. I informed the tenant that she is only entitled to apply for the rent she was paying to the former landlord, pursuant to section 51 of the *Act*. The tenant affirmed her understanding of same.

#### Issue to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began with the former landlord on January 1, 2021 and ended on January 31, 2022. Monthly rent of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant and the former landlord returned this deposit in full to the tenant. No written tenancy agreement was signed by the former landlord and the tenant.

Both parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice. A copy of notice was provided for this hearing. The reason indicated on the notice is:

- *All of the conditions for 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 stated the following facts. She seeks compensation, pursuant to section 51(2) of the *Act*, for 12 months' rent compensation of \$1,300.00, totalling \$15,600.00. The purchasers did not use the rental unit for the purpose on the 2 Month Notice, so the tenant is entitled to compensation. The purchasers or their close family members did not move into the rental unit. Ads were posted online for re-rental. There were "for rent" signs on the upper and lower windows of the rental property. This is contrary to the 2 Month Notice. The tenant only moved out because the purchasers said that they or a family member would move into the rental unit. The notice was not issued in good faith. The purchasers already intended to re-rent the unit. The tenant is a single mother with a child and did not want to be homeless, so she found another place to move.

The purchasers' agent stated the following facts. The former owner and seller of the rental property lived out of country, so documents were required from that country to transfer the title from the seller to the purchasers. The purchasers' lawyer found out that the former owner was deceased and had an executor for the estate. The former landlord was the power of attorney, who dealt with the tenant during her tenancy. The contract of purchase and sale ("CPS") listed the purchasers' possession date as February 1, 2022. The purchasers took possession of the property on July 7, 2022, due to a delay in transferring title. The purchasers provided 39 pages of evidence. On page 11, there is information from the seller's lawyer to the purchasers' lawyer that the land title office rejected the transmission of the rental property. There was no trust agreement and the judge accepted it, but not the land title office. At pages 22 to 23, the notary provided a document from out of country, and the executor of the deceased owner was named on the document. Page 25 is the land title office certificate for when the purchasers became owners on July 7, 2022. The purchasers completed renovations to the rental property in May and June 2022. The former landlord allowed the purchasers to complete renovations at the rental property and gave them a key, even though they did not have title or possession of the property, in order to make them feel comfortable that they would be able to eventually move into the rental property.

The purchasers' agent stated the following facts. The purchasers' two sons and purchaser GS's mother were supposed to move into the rental unit after the tenant vacated. The intention was for the purchasers' sons to learn independence and life skills from their grandmother, and then marry and have their own children and spouses

move into the rental property. The purchasers' sons are young, at 26 and 27 years old. Purchaser GS's mother was ill in the hospital from May 1, 2022, and then died on September 2, 2022. The purchasers felt that the rental unit was not "lucky" after this death. The purchasers provided the death certificate. The purchasers' two sons could not move into the rental unit after their grandmother passed away. The purchasers had extenuating circumstances. The purchasers' son H advertised the rental unit for re-rental on his own. When the purchasers found out, they made him withdraw the advertisement because they realized it was wrong to post it. The advertisement was withdrawn on July 19, 2022, after it was posted on July 6, 2022. The landlord provided hydro and gas bills at pages 31 to 39 showing that the bills are in the name of the purchasers and no tenants or anyone else lived at the rental property from July 2022 to February 2023. The purchasers might sell the rental property, but they want to have a family discussion first. The rental property has not been listed or sold. The purchasers' friends have been staying at the rental unit since February 2023, under a verbal agreement, but they do not pay rent to the purchasers. It is part of the purchasers' religion to mourn a death for 1 year, so no decisions will likely be made until September 2023.

The purchasers' agent stated the following facts. The tenant filed her application 7 months and 20 days after she vacated the rental unit. She did not provide any important evidence including a tenancy agreement. Her entire case is based on the purchasers' rental advertisement, which was withdrawn on July 19, 2022. She filed her claim on July 20, 2022. The tenant did not provide any proof that the purchasers re-rented the unit to new tenants.

The tenant testified regarding the following facts in response. The 2 Month Notice was not issued to the tenant in good faith. The tenant received the CPS from the purchasers. She does not understand why no one moved into the rental unit. She has no proof that the purchasers re-rented the unit to new tenants. She does not dispute the documents submitted by the purchasers. The rental unit was not used for the intended reason on the 2 Month Notice. She thinks that the purchasers conspired with the former landlord to evict and re-rent the unit to new tenants, because the former landlord and purchaser JK both have the same surnames.

The purchasers affirmed that they have no familial relationship to the former landlord, or the deceased owner.

The purchasers' agent stated that it is the religious and cultural practice of the purchasers and the former landlord to use the same common surname for males and the same common surname for females.

## Analysis

### Rules and Burden of Proof

I informed the tenant that, as the applicant, she had the burden of proof, on a balance of probabilities, to present her submissions and evidence, and to prove her monetary claim, in order for me to make a decision regarding her application. She affirmed her understanding of same.

The tenant was provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which she was required to serve to the purchasers. The tenant testified that these documents were served to the purchasers.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

**The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.**

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).**
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).
- Parties (or agents) must participate in the hearing at the date and time assigned.
- The hearing will continue even if one participant or a representative does not attend.
- A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.

The following RTB Rules state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not properly present her application and evidence, as required by Rule 7.4 of the *RTB Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules*.

During this hearing, the tenant failed to properly review and explain her claim, amount, and evidence submitted in support of her application. The tenant submitted documents but did not review or explain them in sufficient detail during this hearing. The tenant did not indicate what provisions of the *Act* she was applying under or how she arrived at the amount that she claimed in her application. I had to repeatedly ask the tenant specific questions about the above information, during this hearing.

This hearing lasted 72 minutes, so the tenant had ample opportunity to present her application and respond to the purchasers' evidence. I repeatedly asked the tenant if she had any other information or evidence to present, during this hearing.

*Findings*

Section 49(5) of the *Act* states the following:

*(5) A landlord may end a tenancy in respect of a rental unit if*

*(a) the landlord enters into an agreement in good faith to sell the rental unit,*

*(b) all the conditions on which the sale depends have been satisfied, and*

*(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
- (ii) the purchaser 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.*

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to 12 times the monthly rent if the purchasers do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

*51 (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.*

It is undisputed that the tenant vacated the rental unit on January 31, 2022, pursuant to the 2 Month Notice. The reason on the 2 Month Notice is undisputed. It is undisputed that the rental unit was purchased by the purchasers, pursuant to a Contract of Purchase and Sale, dated November 2, 2021, with a possession date of February 1, 2022. It is undisputed that the purchasers bought the rental unit for the purchasers' two sons and purchaser GS's mother to occupy. The tenant did not dispute the above information or the purchasers' documentary evidence during this hearing.

Section 51(3) of the *Act* states the following:

*(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.*

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances (my emphasis added):

#### ***E. EXTENUATING CIRCUMSTANCES***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- **A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

#### ***E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE***

##### ***Residential Tenancy Act***

*A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*

- *or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.*

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

I am required to consider the above section 51(3) of the Act, regardless of whether it is raised by any party during this hearing. I raised the above section to both parties during this hearing and provided them with opportunities to respond to same.

I find that the purchasers showed extenuating circumstances prevented them from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice.

It is undisputed that purchaser GS's mother did not occupy the rental unit because she died on September 2, 2022. The purchasers provided a death certificate to confirm same, as evidence for this hearing. I find that purchaser GS's mother's death is an unforeseen event that could not have been predicted or controlled by either party. It is undisputed that the purchasers' two sons did not move into the rental unit, due to the death, and it remained empty until the purchasers' friends moved in rent-free in February 2023. The tenant did not dispute the above information or the purchasers' documentary evidence during this hearing.

According to Residential Tenancy Policy Guideline 50, as reproduced above, an example of an extenuating circumstance is specifically given as:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*

The above example is the exact circumstance in this case. I accept the testimony and documentary evidence of the purchasers, that they purchased the rental unit for purchaser GS's mother to occupy, together with the purchasers' two sons, in order to teach them independence and life skills. Purchaser GS's mother and the purchasers' two sons all qualify as close family members (parent and children of the purchasers), who are entitled to occupy the rental unit, pursuant to the 2 Month Notice. I accept that

the purchaser GS's mother died before occupying the rental unit. The tenant did not dispute the above information during this hearing.

I accept the purchasers' evidence that they took possession of the rental unit on July 7, 2022, due to a delay in transferring the land title from the former deceased owner, who was residing out of country, to the purchasers. I accept the purchasers' evidence that the former landlord was the power of attorney for the deceased owner, who had an executor for the estate. The purchasers provided land title documents, letters, and emails to confirm same. The tenant did not dispute the above information or the purchasers' documentary evidence during this hearing.

I find that the purchasers could not have known at the time of the CPS or the issuance of the 2 Month Notice to the tenant, that there would be a delay in transferring the land title, that purchaser GS's mother would become ill in May 2022, or that purchaser GS's mother would die in September 2022. The tenant did not dispute the above information during this hearing.

I find that it was reasonable for the purchasers' two sons to not occupy the rental unit, after their grandmother passed away, because the intent was to live with her and learn life skills from her, and because they were mourning her death. I accept the purchasers' evidence that the rental unit was empty from July 7, 2022, until February 2023, when they allowed friends to occupy the rental unit rent-free, before they make a decision as to whether to sell the rental unit. The purchasers provided hydro and gas bills, in the name of the purchasers, indicating that no tenants or other people occupied the rental property. I accept the purchasers' evidence that the rental unit has not been sold, nor is it listed for sale. The tenant did not dispute the above information or the purchasers' documentary evidence during this hearing. I find that the above actions of the purchasers were reasonable, given the extenuating circumstances, and that the purchasers did not make a financial profit or re-rent the unit to new tenants.

I accept the purchasers' evidence that their son posted advertisements for re-rental for the unit on July 6, 2022, but it was taken down by July 19, 2022, which I find is a reasonable time period, after the purchasers found out. The tenant did not dispute the above information or the purchasers' documentary evidence during this hearing.

The tenant claimed that the former landlord conspired with the purchasers to evict her from the rental unit because the females were family members, since they had the same surname. I accept the affirmed testimony of the purchasers and their agent, that the purchasers have no familial relationship to the former landlord and that it is their

religious and cultural practice for females to use the same surname, as is done with males.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$1,300.00, totalling \$15,600.00, from the purchasers. This claim is dismissed without leave to reapply.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: April 3, 2023

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Residential Tenancy Branch