



# 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 as a result of the Tenant's Application for Dispute Resolution, made on July 15, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an order granting the return of the filing fee.

The hearing was scheduled for 1:30PM on April 11, 2023 as a teleconference hearing. The Tenant appeared at the appointed date and time of the hearing. No one appeared for the Purchasers. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to each of the Purchasers listed on the Two Month Notice to End Tenancy dated April 18, 2022 (the "Two Month Notice") and also noted on the Buyers Notice to Seller for Vacant Possession. The Tenant stated that these documents were sent by Canada Post Registered Mail on August 5, 2022 to the dispute address which is where the Purchasers were intended to occupy according to the Notices. The Tenant provided a copy of these documents which lists the Purchasers and indicates that they require vacant possession of the rental unit as they intend to occupy the rental unit for their own use. The Tenant also provided a copy of the Registered Mail receipts to confirm service.

Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the Purchasers are deemed to have been served with the Application, and documentary evidence on August 10, 2022, the fifth day after their registered mailings. The Purchaser did not submit any evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

#### Background and Evidence

The Tenant stated that her tenancy started on December 15, 2018. The Tenant stated that near the end of her tenancy, she was required to pay rent in the amount of \$1,400.00 to the Landlord on the first day of each month. The Tenant stated that she vacated the rental unit on June 30, 2022 in compliance with the Two Month Notice. The Tenant provided a copy of the tenancy agreement, the Two Month Notice, and the Buyers Notice to Seller which indicates that the Purchaser instructed the seller to serve the Tenant with the Two Month Notice to End Tenancy on April 18, 2022 as the Purchaser intended to occupy the rental unit for their own use. The Two Month Notice has an effective date of June 30, 2022. The Landlord's reason for ending the tenancy on the Two Month Notice was;

*"All the conditions of 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 stated that she complied with the Two Month Notice and vacated the rental unit on June 30, 2022. The Tenant stated that she saw an advertisement for the rental unit on July 14, 2022. The Tenant provided several screen shots of the advertisement which lists the rental address for rent in the amount of \$2,300.00. The Tenant stated

that she emailed the Purchasers on July 15, 2022 pretending to be an interested occupant. The Tenant provided a screen shot of the conversation which indicates that the rental unit is available to rent as of August 1, 2022. The Tenant confirmed that the advertisement is for the same rental unit that she had just vacated. The Tenant stated that it is clear that the Purchasers have not occupied the rental unit which had been the intended purpose of the Two Month Notice. Instead, the Purchasers intended to re-rented the rental unit for much more rent. As such, the Tenant is seeking compensation in accordance with Section 51 of the Act and for the return of the filing fee.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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.**

(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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive,

regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

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

The Tenant is claiming compensation equivalent to twelve times the amount of rent as the Purchasers have not accomplished the stated purpose of the Two Month Notice.

In this case I find that the Purchasers instructed the seller to serve the Tenant with the Two Month Notice as the Purchaser intended to occupy the rental unit. I accept that the Tenant complied with the Two Month Notice and vacated the rental unit on June 30, 2022.

I find that the Tenant has provided sufficient evidence to demonstrate that the Purchaser instead of occupying the rental unit, attempted to re-rent the rental unit for \$900.00 more per month compared to what the Tenant had been paying. I find that this demonstrates bad faith. I find that the Purchasers did not accomplish the stated purpose of the Two Month Notice. As no one attended the hearing for the Purchasers, I find that there is no evidence to indicate that an extenuating circumstance prevented the purchasers from accomplishing the stated purpose of the Two Month Notice.

Based on the above I find that the Tenant is entitled to **\$16,800.00** (\$1,400.00 x 12) in compensation from the Purchaser, pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$16,900.00.

### Conclusion

The Purchaser has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 of the *Act*. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$16,900.00.

The Tenant is provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: April 11, 2023

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Residential Tenancy Branch