



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants ER (the tenant) and NR and landlord WH (the landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Correction of the landlord's name

At the outset of the hearing the landlord corrected his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

### Preliminary Issue – Application under section 51(2) of the Act

The tenants' application states:

I want compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term.

Amount requested: \$30,300.00.

Description: The Landlord gave notice to end the tenancy because the rental unit/house was to be occupied by the Landlord and his family. We moved out and found other accommodation because of this. Once we had moved, the Landlord did not move back into the rental unit/house but has listed it for sale, instead. We are requesting 12 months rent as compensation for this.

Section 51(2) of the Act states:

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.

Section 51.1 of the Act states:

Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant 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 date the tenancy ended, to satisfy the prescribed circumstance, or
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

Sections 51(2) and 51.1 of the Act both state the landlord must compensate the tenants an amount that is equivalent to 12 times the monthly rent payment if the circumstances to end the tenancy were not accomplished.

The tenants included a copy of the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) into evidence. The parties understood the tenants are seeking compensation because the landlord served the 2 Month Notice.

Based on the tenants' application and the Notice and considering that both parties understood the tenants are seeking compensation because the landlord served the 2 Month Notice, I amended the application for a claim under section 51(2) of the Act.

### Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent under section 51(2) of the Act?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties and witnesses, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed they entered into a fixed-term tenancy from August 20, 2020 to August 20, 2022. Monthly rent when the tenancy ended was \$2,525.00, due on the 20<sup>th</sup> day of the month. The landlord collected a security deposit in the amount of \$1,000.00 and returned it. The tenancy ended early on June 20, 2022.

Both parties also agreed the landlord served and the tenants received the 2 Month Notice dated December 09, 2021. The landlord intended to move to the rental unit.

The 2 Month Notice states the landlord will occupy the rental unit. The effective date was August 20, 2022.

On December 09, 2021 the landlord emailed the tenants:

If you are able to find another place prior to August 20<sup>th</sup>, we would be willing to sign a voluntary end to the tenancy earlier. For example if you wanted to move out in June or July that would be fine and we can sign the appropriate form so you wouldn't pay rent until the end of the fixed term.

On March 26, 2022 the parties email each other:

Tenants: We have managed to buy a house and we get possession at the beginning of June. So we are giving notice for moving out of your place for June 20<sup>th</sup>. Please confirm that you receive this and that this is adequate for written notice for you.

Landlord: Congratulations on finding a home in a very difficult market. Yes June 20 is fine. Would you be able to write down your intention in a letter and both sign it. Please send that to [redacted for privacy]

The landlord confirmed receipt of the March 29, 2022 move out Notice (the move out Notice). It states:

This letter serves as written notice to end our tenancy at the address listed above. The last day of our tenancy will be June 19, 2022.

As we have paid our last month's rent at the beginning of our tenancy, our last monthly rent will be paid on April 20, 2022. According to section 38 of the RTA, our security deposit of \$1000.00 is to be returned within 15 days after you have received our forwarding address in writing and our tenancy has officially ended.

The landlord accepted the move out Notice and understood that it rescinded the 2 Month Notice, as it was a mutual agreement to end the tenancy. The landlord affirmed that if there is a mutual agreement to end tenancy the parties no longer have to comply with notices to end tenancy served prior to the mutual agreement to end tenancy.

The tenant stated he did not agree to rescind the 2 Month Notice. The tenant purchased a house because the landlord served the 2 Month Notice.

The tenants paid rent until June 20, 2022. The landlord testified he accepted the last months' rent when the tenancy started because he did not know this was not allowed in British Columbia.

The landlord moved to the rental unit on June 20, 2022 without furniture, completed a renovation and sold it on November 19, 2022.

## Analysis

Per Rule of Procedure 6.6 and section 51(2) of the Act, the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Residential Tenancy Branch (RTB) Policy Guideline 2A states:

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).

[...]

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

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish 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 tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The landlord offered the tenants to end the tenancy early on December 09, 2021 and did not indicate that if the tenants move out before the 2 Month Notice's effective date on August 20, 2022 the 2 Month Notice will be rescinded.

The March 26, 2022 emails and the move out Notice do not indicate the parties agreed to rescind the 2 Month Notice.

The landlord was not obligated to accept the early end of the tenancy on June 20, 2022, but the fact that the landlord accepted the early end of the tenancy does not rescind the 2 Month Notice.

I accept the tenants' uncontested testimony that they purchased a house because the landlord served the 2 Month Notice.

Considering the above, I find the parties did not agree to rescind the 2 Month Notice.

I accept the landlord's uncontested testimony that he sold the rental unit on November 19, 2022. Thus, I find the landlord did not occupy the rental unit for six months after the 2 Month Notice's effective date of August 20, 2022, or even from the end of the tenancy on June 20, 2022.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$30,300.00 (monthly rent of \$2,525.00 x 12 months).

As the tenants were successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee.

Thus, the tenants are entitled to a monetary award in the amount of \$30,400.00.

### Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$30,400.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. Should the landlord 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: May 03, 2023

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Residential Tenancy Branch