



# 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 the tenant's application, filed on September 17, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$8,700.00 for 12 months' rent compensation because this tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 29, 2022, and effective September 31, 2022 ("2 Month Notice") and the respondents have not complied with the Act or used the rental unit for the stated purpose, pursuant to section 51; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

Respondent MD ("landlord") and respondent VW ("purchaser") (collectively "respondents"), the tenant, and the tenant's agent attended this 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 29 minutes from 1:30 p.m. to 1:59 p.m.

All hearing participants provided their names and spelling. The landlord, the tenant, and the purchaser all provided their email addresses for me to send this decision to them after this hearing.

The landlord and the purchaser agreed that the landlord owned the rental unit until she sold it to the purchaser. The landlord confirmed that she was the landlord for the tenant during her tenancy. She provided the rental unit address.

The tenant confirmed that her agent was present to observe only, and he would not be testifying 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 outcomes and consequences, to all parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

All parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application. All parties were given an opportunity to settle this application during this hearing, but declined to do so.

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

I cautioned both respondents that if I granted the tenant's entire application, one or both of them could be required to pay the tenant \$8,800.00 total, including the \$100.00 filing fee. Both respondents affirmed that they were prepared for the above consequences if that was my decision.

Both respondents confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that both respondents were duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The purchaser affirmed that she did not submit any documentary evidence for this hearing.

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

### Issues to be Decided

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

Is the tenant entitled to recover the filing fee paid for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, 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 landlord and the tenant agreed to the following facts. This tenancy began on May 1, 2020 and ended on August 31, 2022, with the landlord only. A written tenancy agreement was signed by the tenant and the landlord. Monthly rent of \$725.00 was payable to the landlord only, on the first day of each month. A security deposit of \$362.50 was paid by the tenant and it was returned in full by the landlord. The rental unit is one bedroom in the basement of a house. The tenant's roommate lived in a separate bedroom in the same basement of the same house. The tenant's roommate paid rent of \$725.00 to the landlord only, on the first day of each month, and she paid a security deposit of \$362.50, which was returned in full by the landlord. Different tenants lived in the upper suite of the same house.

All parties agreed that the tenant vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing.

The tenant confirmed that she seeks compensation under section 51(2) of the *Act* for 12 months of rent reimbursement of \$725.00, totaling \$8,700.00. The tenant stated that because the respondents did not use the rental unit for the purpose on the 2 Month Notice, the tenant is entitled to compensation. The respondents confirmed that they dispute the tenant's entire application.

The tenant testified regarding the following facts. On June 2, 2022, she heard from the landlord that she was putting the house up for sale including the basement and upper units. She told the landlord that she would consider moving to a new location. The rental market was "hot" and expensive. On June 12, the realtor accepted an offer. On June 13, the house sale fell through. For months, nothing happened with the sale. The

tenant's lease was up in August and it would become a month-to-month tenancy after, so she stayed because she did not know if the house would go up for sale. On July 8, the landlord accepted an offer regarding the house and it was a confirmed sale by July 26. On July 22, there was an extension to July 29, as per the purchaser. The tenant received a mutual agreement to end tenancy at the end of August from the landlord. She told the landlord she would not sign this agreement and she wanted a 2 Month Notice because she did not want to move out unless the purchaser wanted to move in. On July 29, the house was sold. The 2 Month Notice was served on the proper form to the tenant. She cannot recall the time when the realtor delivered the notice to her. She received the notice for the purchaser to move in, which was an acceptable reason. She did not get the proper notice period. She agreed to move out by September 1, for the purchaser. The tenant left on August 28, 2022. The next day, the purchaser posted an advertisement to re-rent the rental unit for \$1,200.00 per month, and used the realtor's photographs of the unit. Only the tenant's room was up for rent, not her roommate's room in the basement of the house. This is why her roommate did not file an RTB application for 12 months' rent compensation because the advertisement did not include her room. The 2 Month Notice was served unfairly. The purchaser had no intent to move in and stay for 6 months because she re-rented the rental unit to new tenants.

The landlord testified regarding the following facts. She told all the tenants in the house that she was selling the house. The upstairs tenants were on a month-to-month agreement. The downstairs tenant was on a lease that was up in August. On June 3, she had a conversation with the tenant regarding listing the house for sale. The tenant wanted to move out and said her lease was up in August. The landlord sent a mutual agreement to end tenancy to the tenant, but the tenant did not sign it and said she had no intent to move out. The landlord's agreement was to provide August monthly rent free for the tenant and her roommate. It was a complicated rent situation at the top and bottom of the house. The upstairs tenants needed two full months' notice. The purchaser wanted to move into the basement suite based on the mutual agreement and she was going to let the upstairs tenants live there. But then the purchaser moved upstairs after. The sale of the house was extended for 30 days to ensure that the landlord could cover her bases with all the tenants and give them proper notice to move out. On August 26, the upstairs tenants moved out and served the landlord with notice that they were leaving. They got August rent for free, but it was prorated and they vacated before the purchaser took possession.

The purchaser testified regarding the following facts. She took possession of the house, and the basement was empty. Her intent was to live in the basement until the upstairs tenants moved out. She found out that the upstairs tenants moved out the day

before she took possession. She then took possession of the whole house, including the basement. She rented out the tenant's rental unit, which is one bedroom unit, to a new tenant student as of October 1, 2022. The rent from this student was a "mortgage helper" for the landlord. The landlord continues to live upstairs, to date, since she took possession on September 1, 2022.

## Analysis

### Burden of Proof

I informed all parties of the following information during this hearing. The tenant, as the applicant, is required to present her application and evidence. The purchaser the burden of proof, on a balance of probabilities, to prove that she used the rental unit for the reason indicated on the 2 Month Notice, issued to the tenant. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the purchaser to provide evidence of her claims. They affirmed their understanding of same.

The purchaser confirmed receipt of the tenant's application package, which includes a four-page document from the RTB entitled "Notice of Dispute Resolution Proceeding" ("NODRP"). The NODRP contains the phone number and access code to call into the hearing, and states the following at the top of page 2, in part (my emphasis added):

- ***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 NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. I informed all parties that I

had 30 days to issue a written decision after this hearing. They affirmed their understanding of same.

The purchaser received a detailed package, including the NODRP documents, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the purchaser to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the purchaser to provide sufficient evidence of using the rental unit for the reason on the 2 Month Notice, since she asked the landlord to issue the notice to the tenant on her own accord.

The following RTB *Rules of Procedure* are applicable and 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 purchaser did not sufficiently present her 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 purchaser failed to sufficiently review and explain her claims. She failed to provide any documentary evidence in response to the tenant's application.

This hearing lasted 29 minutes, so the purchaser had ample time and multiple opportunities to present her submissions, evidence, and response. During this hearing, I asked the purchaser if she had any other submissions and evidence to present, and if she had any response to the tenant's submissions and evidence.

Findings

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 purchaser does not use the rental unit 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.*

*(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.*

It is undisputed that the tenant vacated the rental unit on August 31, 2022, pursuant to the 2 Month Notice. It is undisputed that neither the purchaser, nor her close family members, occupied the rental unit, after the tenant vacated. It is undisputed that the landlord issued the 2 Month Notice to the tenant, for the purchaser to occupy the rental unit.

None of the parties testified about the actual reason indicated on page 2 of the 2 Month Notice, which was:

- *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).*

None of the parties testified that the below reason was not provided on page 2 of the 2 Month Notice, given that the purchaser's name was provided on page 2 of the notice, along with checkmarks indicating that a copy of the contract of purchase was attached and a copy of the purchaser's written request for the seller to issue an eviction notice:

- *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.*

I find that although the landlord indicated the wrong reason on the 2 Month Notice, that was likely an inadvertent error, and does not invalidate the notice, and she still included the purchaser information on the notice. I also find that the tenant was well aware that the house was being sold to the purchaser, as she was verbally informed by the landlord many times, and she testified at length about the sale process. The tenant also testified at this hearing, that the 2 Month Notice was issued for the proper reason of the sale of the rental unit. Therefore, I find that the above reason for the sale of the rental unit, should have and was intended to be included on the 2 Month Notice, but was inadvertently not included. All parties testified that this was the reason the notice was issued to the tenant.

Although the effective date on the 2 Month Notice is September 31, 2022, and this date does not exist since September only has 30 days in the month, I find that this was likely another inadvertent error, which does not invalidate the notice. I find that the effective date automatically corrects to September 30, 2022, as per section 53 of the *Act*.

It is undisputed that the purchaser did not occupy the rental unit for at least 6 months after the tenant vacated, as required. The purchaser provided affirmed testimony, stating that she did not move into the rental unit after the tenant vacated.

Accordingly, I find that neither the purchaser, nor any close family members of the purchaser, occupied the rental unit after the tenant vacated on August 31, 2022, for at least 6 months, as required by the 2 Month Notice and section 51 of the *Act*.



Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

*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 extenuating circumstances, as per section 51(3) of the Act, regardless of whether it is raised by any party during this hearing. I informed all parties of the above information, and they affirmed their understanding of same.

I find that the purchaser failed to show extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice, as per section 51 of the Act, and Residential Tenancy Policy Guidelines 2A and 50.

It is undisputed that the purchaser re-rented the rental unit to a new tenant, after the tenant moved out, as of October 1, 2022. I find that the purchaser made a profit from re-renting the unit to a new tenant, claiming that she needed help with her mortgage.

While I accept that the purchaser suffered a delay in the possession date of the rental unit, due to the eviction process involving all tenants in the upper and lower suites of the house, I do not find this to be a sufficient extenuating circumstance. While I accept that the purchaser did not find out about the upper suite tenants moving out until the day before she took possession, I do not find this to be a sufficient extenuating circumstance.

The purchaser did not provide the tenant with an opportunity to stay at the rental unit or move back into the rental unit, given that the purchaser took possession on September 1, 2022, and the tenant vacated on August 31, 2022, the day before when the purchaser claims she found out that the upper suite tenants moved out.

The purchaser could have moved into the rental unit after the tenant vacated, but instead opted to move upstairs in the house, and re-rent the rental unit to a new tenant, instead of occupying it with the remainder of the house, as she claimed she was intending to do.

Therefore, I find that the purchaser breached section 51(2)(b) of the Act, as the purchaser or her close family members did not occupy the rental unit for at least 6 months after the tenant vacated on August 31, 2022. I find that the purchaser failed to

show extenuating circumstances prevented her from using the rental unit for the reason on the 2 Month Notice.

Accordingly, I find that the tenant is entitled to 12 times the monthly rent of \$725.00, as compensation under section 51 of the *Act*, which totals \$8,700.00, from the purchaser only. As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the purchaser only. The tenant is provided with a monetary order of \$8,800.00 total against the purchaser only.

The tenant's entire application is dismissed without leave to reapply, as against the landlord only. I find that the landlord was not responsible for using the rental unit for the reason on the 2 Month Notice, the purchaser was, because it was due to the purchaser's instructions that the landlord was required to issue the notice to the tenant, so the purchaser could purchase the rental unit and move into it. As noted above, I found that the landlord inadvertently included the incorrect effective date and reason on the notice, which I found did not invalidate the notice. I find that the landlord is not liable to pay for the 12 month rent compensation to the tenant, based on the above inadvertent errors.

### Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$8,800.00, against the purchaser only. 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.

The tenant's entire application is dismissed without leave to reapply, as against the landlord only.

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 04, 2023

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Residential Tenancy Branch