



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

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- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

### Background and Evidence

The tenant gave the following testimony. The tenancy had a monthly rent payable of \$1300.00 due on the first of each month. On July 28, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by October 1, 2021. The ground for the Notice was:

- *a close family member intends in good faith to occupy the rental unit.*

The tenant moved out of the rental on September 1, 2021. The tenant testified that she believes the unit was used as a short-term rental and that the landlords' mother never moved in. As part of the tenant's application, she stated the following: "*I was evicted by the new owners who said they were going to use the suite for owner occupation. I have since been told by multiple neighbours that the suite is not owner occupied.*" The tenant testified that she was told by the landlord that they had no intention of using the subject unit for their own use. The tenant submits that she should be entitled to 12 months rent as compensation.

The landlord gave the following testimony. The landlord testified that he had been the primary care giver to his mother until July 25, 2021 where an incident precipitated the need to have her move in with him. The landlord testified that his mother was put on an emergency list for a care facility and was placed in one in Kelowna in mid August 2021. The landlord testified that the plan was to have his mother stay in the care facility until the tenant moved out with a tentative move in date shortly after October 1, 2021. The landlord testified that his mothers health was a fluid situation that changed quickly.

The landlord testified that she was getting better physically but declining mentally and refusing treatment at the care facility which negatively impacted her health. The landlord testified that his mothers health became so precarious she could not be moved from Kelowna to Vancouver and eventually died on September 8, 2022. The landlord testified that the unit was never used as a short-term rental or any other type of rental. The landlord testified that there was no financial gain, and that the unit was not used for a full year.

### Analysis

It is worth noting that the section of the 2 Month notice where the landlord is to indicate who is moving into the unit is not checked off, however, both parties agreed and operated under the information that the landlords mother was going to move in.

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 landlords 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 the landlords' mother did not occupy the rental unit because she died on September 8, 2022. The landlord provided a death certificate to confirm same, as evidence for this hearing. I find that landlords mother's death is an unforeseen event that could not have been predicted or controlled by either party as her health deteriorated rapidly which prevented her from being transported from a care facility in Kelowna to the home in Vancouver.

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.*

I accept the testimony and documentary evidence of the landlord. The tenant made allegations that the unit was used for short term rental but did not provide any

corroborating evidence. Due to extenuating circumstances, the landlord is excused from paying compensation to the tenant, accordingly; I dismiss this application in its entirety without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety 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: May 08, 2023

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Residential Tenancy Branch