



# 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 Tenants' Application for Dispute Resolution, made on August 20, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenants, the Landlord, the Landlord's Agent, and the Landlord's Son attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Notice of Hearing and documentary evidence package. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord confirmed that they did not submit any evidence in response to the Tenants Application.

The parties were 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. Are the Tenants 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 parties testified and agreed to the following; the tenancy began on August 18, 2019. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,100.00 which was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$525.00. The Tenancy ended on July 31, 2022.

The parties testified and agreed that the tenancy ended after the Landlords served the Tenants with the Two Month Notice dated May 15, 2022 with an effective vacancy date of July 30, 2022 (the "Two Month Notice"). The Landlords' reason for ending the tenancy on the Two Month Notice was;

*"The rental unit will be occupied by the child of the landlord or the landlord's spouse."*

The Landlords' Agent explained that the Tenants provided their notice to end tenancy to the Landlords on January 31, 2022 with a February 28, 2022 effective date. The Landlords' Agent stated that the Landlords began to plan what to do with the rental unit once the Tenants moved out, and decided it would be a good opportunity for their son P.T. to move downstairs in the rental unit on his own.

The Landlords' Agent stated that the Tenants later approached the Landlords and indicated that they wished to delay the end of their tenancy as the place they had in mind to move to did not work out. As such, the Landlords and Tenants agreed to extend the tenancy. The Landlords' Agent stated that the Tenants continued to ask for more time each month until the Landlords decided to serve the Tenants with the Two Month Notice on May 31, 2022 as their son P.T. still wished to occupy the rental unit.

The Landlords' Agent stated that between the time that the Landlords' son initially intended to occupy the rental unit on March 1, 2022 and the date that the Tenants actually vacated the rental unit on July 31, 2022, the Landlords' son's niece turned one year old and was in need of child care. The Landlord's Agent stated that the Landlords' son decided to quit one of his two jobs to be available to care for his niece. Given the reduced income from leaving one job, the Landlords' son was therefore no longer able to afford paying the Landlords rent to occupy the rental unit as intended. Therefore, the Landlords' son did not move downstairs into the rental unit and the Landlords listed the rental unit for rent, which was rented by mid September or beginning of October 2022.

The Tenants responded by agreeing that they had provided the Landlords with their notice to end tenancy, however, after their option to move fell through, the Landlords agreed to continue their tenancy. The Tenants stated that the Landlords had later requested that the Tenants pay more rent. When the Tenants declined, the Landlords indicated that their son wished to occupy the rental unit and then served the Tenants with the Two Month Notice. The Tenants stated that shortly after they moved out, they saw the rental unit advertised for rent. The Tenants provided a picture of a rental sign in front of the rental unit. The Tenants are seeking compensation equivalent to twelve times the amount of rent as the Landlords did not accomplish the stated purpose of the Two Month Notice.

### Analysis

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

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 Tenants are claiming compensation in the amount of \$13,200.00 which represents twelve months of rent as the Landlords did not accomplish the stated purpose of the

Two Month Notice by having their son occupy the rental unit for at least six months after the effective date of the notice.

In this case, the Landlords, after receiving the Tenants notice to end tenancy, were under the impression that the Tenants were vacating the rental unit at the end of February 2022. I accept that the Tenants' plans changed, and they wished to remain in the rental unit. I see no evidence to indicate that the parties mutually agreed to end the tenancy on a different date, or that the Landlord collected rent for "use and occupancy" only. I find that the Landlords were at liberty to apply for an Order of Possession based on the Tenants' notice to end tenancy, should they had wished to pursue the end of tenancy. As the Landlords did neither, I find that the tenancy between the parties continued.

I accept that the Landlords served the Tenants with the Two Month Notice, which the Tenants complied with and vacated the rental unit on July 31, 2022. During the hearing, the Landlord's Agent confirmed that the Landlords' son P.T. did not occupy the rental unit, instead the Landlords decided to re-rent the rental unit. I find that the Landlords did not accomplish the stated purpose of the Two Month Notice.

#### According to Policy Guideline 50 F. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.

The Landlords' reasoning for not having their son move into the rental unit is that their son decided to quit one of his jobs and care for his niece, leaving him unable to afford renting the rental unit. I find that this does not constitute an extenuating circumstance preventing the Landlords' son from occupying the rental unit. I find that the Landlord's son changed his mind and decided to care for his niece rather than occupying the rental unit. Instead, the Landlords re-rented out the rental unit shortly after the end of the tenancy and did not fulfill the requirements of Section 49 of the *Act*.

Based on the above I find that the Tenants are entitled to **\$13,200.00** in compensation from the Landlords, pursuant to section 51(2) of the *Act*. As the Tenants were 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 Tenants are therefore entitled to a Monetary Order in the amount of \$13,300.00.

### Conclusion

The Landlords have not accomplished the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$13,300.00.

The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 16, 2023

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Residential Tenancy Branch