



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC

### Introduction

The Applicant seeks an order pursuant to s. 51(2) of the *Residential Tenancy Act* (the “Act”) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

A.G. appeared as the Applicant and was joined by his partner, G.G.. G.S. appeared as the Respondent and was joined by his partner, X.H..

The Respondent had the assistance of Y.Z., who acted as translator. Y.Z. certified he was able to translate English to Mandarin, and vice versa, on behalf of the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issue to be Decided

- 1) Is the Applicant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?

## Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

### *Background*

The Applicant confirms the following details with respect to the tenancy:

- The tenancy began on October 1, 2020.
- The tenancy ended on February 9, 2022 after moving out of the rental unit.
- At the end of the tenancy, rent of \$4,161.50 was due on the first of each month.

A copy of the tenancy agreement was provided to me by the Applicant. It lists that rent was due in the amount of \$4,100.00. I was advised by the Applicant that a rent increase was imposed such that the revised amount listed above was paid at the end of the tenancy.

I am provided with a copy of a Two-Month Notice to End Tenancy signed on December 20, 2021 (the “Two-Month Notice”) by the Applicant, which shows it was issued on the basis that rental unit had been sold, the conditions satisfied, and the buyer requested vacant possession due to their intention to occupy the rental unit. The effective date of the Two-Month Notice is February 28, 2022.

The Applicant acknowledges receiving the Two-Month Notice. The Respondent acknowledges he requested vacant possession of the rental unit when he purchased the property.

### *Summary of Relevant Law*

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Pursuant to s. 51(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49.

In this instance, I am told by the Respondent that they have yet to occupy the rental unit and that certain renovation work has been needed due to safety issues at the property. By way of general overview of the Respondent's position, they argued that they wished to occupy the rental unit sooner but that the renovation work has faced several delays such that that could not yet be accomplished. I am told the property will be ready for occupancy in the summer of 2023.

I highlight *Furtado v Maasanen*, 2020 BCSC 1340 ("*Furtado*"), a decision which interpreted s. 51 of the *Act* and was recently upheld by the BC Court of Appeal (see *Furtado v Maasanen*, 2023 BCCA 193), as I find that it provides valuable guidance to the present circumstances.

*Furtado* was the judicial review of a decision made by the Residential Tenancy Branch granting a former tenant compensation under s. 51(2) of the *Act* after a landlord failed to occupy the rental unit within a reasonable time after the effective date of the notice to end tenancy. By way of some context, the landlord in *Furtado* argued that they were unable to occupy the rental unit within a reasonable time of the effective date of the notice to end tenancy due to renovation delays.

On review arbitrator's decision, the judge in *Furtado* set it aside on the basis that the arbitrator failed to consider whether extenuating circumstances were present. Rather than remit the matter to the Residential Tenancy Branch for redetermination, the judge in *Furtado* made findings that the renovation delays constituted extenuating circumstances such that the Applicant's were not entitled to compensation.

### *Extenuating Circumstances*

Turning back to the present matter, the Respondent advises me that he took possession of the property on March 2, 2022, and that upon doing so, discovered that there were cracks in the foundation. I am provided photographs of the cracks in the foundation by the Respondent.

In his submissions, the Applicant acknowledges the property had subsidence issues, but argued these would have been obvious upon inspection of the property. When

asked whether a formal inspection was conducted as a condition of the purchase, the Respondent advised that no such condition was imposed. I am told from the Respondent's side that they had been looking for a property for approximately one year and had only viewed the property with an eye to the layout and its general condition.

The Respondent tells me that contractors were hired on March 4 or 5 and that he began the process for applying for a building permit on March 11, 2022. Review of the evidence provided to me shows an email dated March 11, 2022 in which the Respondent's engineering firm made a request for a survey plan of the property as part of the building permit application. The email states the following:

I have [the Respondent] here who is the owner of the above property. He is looking to develop (sic) his current property by adding an addition on top of his upper floor. We understand there is a creek called [redacted] running next to the property. As part of the building permit application, [the municipality] will require a development permit prior to the building permit application. Further to this, we will also need to retain a surveyor to provide a legal survey plan as part of the required documents for the development permit application.

I have redacted personal identifying information from the passage above in the interest of the parties' privacy. I am told by the Respondent that the building permit was granted on September 26, 2022, and that work began on September 28, 2022.

The Respondent's evidence includes a copy of an asbestos analysis report dated October 6, 2022, which shows asbestos present at the property. The Respondent argued the asbestos presented an additional health and safety issue for moving into the property and resulted in further renovation delays. The Applicant argued that asbestos would only be a problem should it be disturbed, which was caused by the Respondent's renovations.

I enquired with the Respondent what the scope of the renovations were prior to taking possession of the property. The Respondent advised that cosmetic upgrades were planned, though this was expanded upon discovery of the foundation issues. The Respondent advises that he and his family are renting a property and were eager to move into their new home. I am told by the Respondent that he informed his landlord that they would be leaving, only to then ask to stay longer pending the completion of the renovation. The Respondent has put into evidence a copy of the tenancy agreement.

The Respondent further advised of financial stress associated with paying rent, the mortgage on the property, and construction costs.

On balance, I accept that the Respondent was unaware of the subsidence issue prior to purchasing the property. The Applicant argues that the Respondent should have known the issue was present and likely issued an improper notice to end tenancy for occupancy rather than renovation. I am not persuaded that this is the case. I accept no inspection was conducted of the property prior to the purchase and I further accept that the Respondent is a lay person without knowledge on identifying signs associated with a foundation's subsidence.

I further accept the Respondent's testimony that he did plan on minor cosmetic renovations. The Respondent is currently paying rent as evidenced by the tenancy agreement. I accept that he and his family were searching for a new house for a year and were otherwise prepared to move into the rental unit sooner but for the foundation issues. I also accept that the scope of renovations likely expanded significantly when the foundation issue was identified. If structural work was required, which I accept it was based on the submissions from both parties, it would seem to be an opportune time to undertake other work at the property.

Finally, I accept that the construction process has faced numerous delays, including processing times with the building permit itself. The Respondent has provided evidence to support he initiated the process for applying for the building permit in March 2022 and only obtained the permit itself on September 26, 2022. I further accept that the asbestos remediation further delayed work at the property.

I find that extenuating circumstances are present such that the Respondent was prevented from occupying the rental unit with his family. Accordingly, the Respondent is excused from liability under s. 51(2) of the *Act* and the application is hereby dismissed.

### Conclusion

Extenuating circumstances are present such that the Respondent is excused from liability under s. 51(2) of the *Act*. I hereby dismiss the Applicant's claim under s. 51(2) of the *Act* 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 09, 2023

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Residential Tenancy Branch