



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The Tenants applied for dispute resolution (Application) and seek the following:

- \$22,800.00 in compensation under section 51 of the *Residential Tenancy Act* (the Act) because their tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use (the Notice) and the Landlord did not use the rental unit (the Property) for the stated purpose; and
- to recover the cost of the filing fee under section 72 of the Act

The Landlord and the Tenants attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenants testified they served the Notice of Dispute Resolution Package (the Materials) on the Landlord on September 22, 2022 via registered mail. The Landlord confirmed receipt of the Materials and raised no issues with service. Therefore, I find that pursuant to sections 89 and 90 of the Act that Tenants' Materials were sufficiently served to the Landlord.

The Landlord testified they had not served their evidence to the Tenants. Rule 3.15 of the *Rules of Procedure* states that the respondent's evidence must be received by the applicant not less than 7 days before the hearing. Per rule 3.17 of the *Rules of Procedure* I exclude the Landlord's evidence from consideration as it was not served to the Tenants.

### Issues to be Decided

1. Are the Tenants entitled to the requested compensation?
2. Are the Tenants entitled to recover the filing fee from the Landlord?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenants seek compensation of \$22,800.00 which is equivalent to twelve months' rent based on the Landlord failing to use the Property for the stated purpose on the Notice.

The parties agreed on the following regarding the tenancy:

- The tenancy started on January 1, 2018 and was on a month-to-month basis from December 31, 2021.
- Rent was \$1,900.00 per month due on the first day of the month.
- The tenancy ended on May 31, 2022 in accordance with the Notice.
- There was a written tenancy agreement in place which was entered into evidence by the Tenants.

A copy of the Notice was entered into evidence by the Tenants. It is signed May 30, 2022 and provides an effective date of May 30, 2022. The Landlord clarified that the dates on the Notice were incorrect. The date the Notice was signed was actually February 14, 2022 and the effective date should read May 31, 2022. The Tenants confirmed receipt of the Notice via email from the Landlord's realtor on February 14, 2022 and that they understood the effective date of the Notice should read May 31, 2022. Given this, I use my authority under section 68(1) of the Act to amend the date the Notice was signed to February 14, 2022 and the effective date of the Notice to May 31, 2022.

The Landlord testified as follows. He and his father purchased the Property in early February 2022. They had verbally asked the Tenants if they wanted to continue occupying one half of the Property, either the upper or lower portion, instead of the

entire Property as they had been doing during the tenancy. The Tenants declined this offer.

The Notice was issued as The Landlord's sister, JB, and his grandmother were going to move into the Property. The Property is conveniently located near a university that JB attends. The Landlord also needed to renovate and clean up the Property. A separate basement suite was added as part of the renovations.

JB and the Landlord's grandmother moved into the Property on June 4, 2022. The grandmother had applied for knee surgery in Calgary, Alberta around one year before occupying the Property. In August 2022, the grandmother got a telephone call to advise their surgery would take place in Alberta in early September 2022. As a result, the grandmother left the property for Alberta in late August 2022 and remained there, living with her daughter, and undergoing physiotherapy.

This left JB alone in the Property which she did not like as there were homeless people in the area. JB asked the Landlord if they could have a room mate. The Landlord advertised online for a room mate but they did not get any suitable candidates, so JB moved back into the Landlord's house in mid-September 2022.

In late July or early September 2022, the Landlord made more of a push to look for tenants to occupy the Property. A suitable candidate was found and on October 1, 2022 a tenant moved into the Property.

The Tenants testified as follows. When the Landlord offered them the opportunity to occupy just the upper or lower portion of the Property, they had said to the Landlord they would never get permits from the municipality to make the required changes to allow this to happen, so it was not possible.

They do not believe JB ever occupied the Property as they saw it advertised online on the morning of July 6, 2022 and the posting was 13 hours old at that time, so they concluded the advertisement was placed on July 5, 2022. This post was removed and then on September 6, 2022 the Property was listed again with the opportunity to rent either the upper or lower suite.

Additionally, the Tenants' children attend school nearby, so they regularly pass the Property. They noticed blankets on the windows, newspapers piling up, contractors

working, the grass getting long, and a boat and a truck being stored outside which led them to believe the Property was vacant.

The Tenants stated they had lived in the neighbourhood for 11 years and found it to be a safe place overall. They pointed out that the Landlord purchased the Property sight unseen, and they could have done due diligence before buying the Property.

In response to the Tenants' testimony, the Landlord stated they had never had any contractors at the Property. All the work was carried out by the Landlord and his father. The Landlord reiterated that JB and his grandmother did live at the Property. It was reiterated that they both moved in on June 4, 2022, the grandmother left in late August 2022 and JB left in mid-September 2022. The truck seen outside the Property was registered to JB.

### Analysis

Section 49(3) of the Act states that a landlord who is an individual may end a tenancy if the landlord, or a close family member of the landlord intends in good faith to occupy the rental unit. Close family members are defined in the same section of the Act as meaning the individual's parent, spouse or child, or the parent or child of that individual's spouse.

In this case, the Notice indicates the Property will be occupied by the child of the Landlord or Landlord's spouse. The Landlord confirmed their father is also on the title of the Property so for the purposes of the Act, would also be considered a landlord. Therefore, I find that JB meets the definition of close family member.

The Notice also indicates a purchaser has requested the Notice be issued and the purchaser or a close family member intends to occupy the unit. I find this to be not relevant or applicable as no evidence or testimony before me indicated the Property changed ownership after the Notice was issued and the Landlord was the owner at the time the Notice was issued. No purchaser information is entered on the Notice, so I find it likely this box was checked in error. Therefore, I shall only be considering if the child of the Landlord or Landlord's spouse, i.e. JB, occupied the Property as the stated purpose on the Notice.

Section 51(2) of the Act says that if the stated purpose on the notice to end tenancy is not accomplished within a reasonable amount of time and for a duration of at least 6

months from the effective date of the notice to end tenancy, the landlord must pay the tenant twelve months' rent compensation. However, section 51(3) of the Act states that an arbitrator may excuse the landlord from paying twelve months' rent compensation to the tenant if, in the arbitrator's opinion, extenuating circumstances prevented the stated purpose on the notice to end tenancy from being accomplished.

In this case, the Landlord testified that JB occupied the Property from June 4, 2022 to "mid-September 2022". The effective date of the Notice is May 31, 2022 which means that to fulfil the stated purpose on the Notice, JB would have needed to occupy the Property until November 30, 2022. Based on the Landlord's testimony, JB move out of the Property well before this date and therefore, I find the 6 month occupancy requirement has not been met in this case.

Therefore, I must decide if the reasons put forward by the Landlord as to why JB did not occupy the Property for at least 6 months to be valid extenuating circumstances. If I find the reasons to be valid extenuating circumstances, the Landlord will be excused from compensating the Tenants.

Policy Guideline 50 on Compensation for Ending a Tenancy defines extenuating circumstances as 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. The Landlord has the burden of proving, on the balance of probabilities, that they are excused from paying compensation to the Tenants on the basis that extenuating circumstances prevented the stated purpose on the Notice from being accomplished.

The Landlord stated that their grandmother returned to Alberta, leaving JB alone in the Property. JB did not like living alone and vacated the Property before the 6 month occupancy requirement was fulfilled and lived with the Landlord instead.

I find that given the Landlord testified their grandmother had applied for surgery around a year before moving into the Property, and that the surgery had not happened before moving into the Property, it could have been reasonably anticipated that the surgery would take place at some point after they began to occupy the Property. Therefore, I find that it was reasonably foreseeable that the grandmother would leave the Property and JB would be alone for at least some period of time. No evidence was presented to me that indicated why the grandmother's surgery could not have taken place in British

Columbia, or why they chose to remain in Alberta after the surgery and not rejoin JB in the Property.

The Landlord testified that they attempted to find a room mate for JB, but these efforts were not successful as suitable candidates were not found. Based on the testimony of the Landlord, I find that there were some possible candidates for room mates for JB, but it was not explained why they were not suitable.

Overall, I find that the circumstances leading up to JB living alone in the Property to be both foreseeable to the Landlord and within their control. Additionally, I find that in and of itself, the dislike of living alone on the part of JB to be a matter of personal preference and therefore within the control the Landlord as it would have been known, or ought to have been known, prior to them occupying the Property.

None of the Landlord's testimony indicated to me that there were any barriers, besides personal preference, that meant JB could not reside alone in the Property such as a disability or medical condition. I found the Landlord's testimony regarding the issue of homeless people in the area and the assertion that this made JB dislike living in the Property to be vague and unconvincing. JB was not called as a witness to testify as to why they did not like living alone or provide further insight into the issue of the alleged homeless people in the area. There was no evidence or testimony presented to me that expanded on the Landlord's assertions, or that provided details of any specific incidents that would give rise for concern on the part of JB.

Given the above, I do not find the Landlord has proven, on the balance of probabilities, the extenuating circumstances they put forward to be valid and therefore I can not excuse them from compensating the Tenants under Section 51(2) of the Act.

Therefore, I grant the Tenants' Application. The Tenants are entitled to compensation equivalent to 12 months' rent. I issue the Tenants a Monetary award of \$22,800.00 (\$1,900.00 x 12).

As the Tenants were successful in their Application, I authorize the Tenants to recover the filing fee in the amount of \$100.00 from the Landlord.

Conclusion

The Tenants' Application is granted.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Compensation under Section 51(2) of the Act	\$22,800.00
Filing fee	\$100.00
<b>Total</b>	<b>\$22,900.00</b>

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 06, 2023

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Residential Tenancy Branch