



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

On August 30, 2022, the Tenants made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing, with D.H. attending later as a witness. Landlords G.N. and J.G. attended the hearing, and stated that they were the only two owners of the rental unit. As such, the Style of Cause on the first page of this Decision has been amended to reflect this correction.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package and the parties’ respective evidence packages was discussed and there were no issues with service. As such, I have accepted all parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started approximately 14 years ago with a different landlord, and that the tenancy ended when they gave up vacant possession of the rental unit on June 30, 2022, after receiving the Notice. Rent was established at an amount of \$1,116.50 per month and was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid. A copy of a written tenancy agreement was not submitted as documentary evidence for consideration.

Landlord G.N. did not know when the tenancy started, nor did he know how much rent was at the end of the tenancy.

Landlord J.G. advised that they gave the seller of the rental unit a letter dated April 14, 2022, asking him to serve the Notice for an effective date of June 30, 2022. She agreed that the reason the Notice was given was because "All of the conditions for the 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." As well, it was indicated on the Notice that the effective end date of the tenancy was June 30, 2022.

She then testified that they moved from their parents' residence and took possession of the rental unit on July 1, 2022. She referenced financial documents, painting bills, and other utility bills to support this position. She stated she only changed the address on

her driver's license a "month or two months" after taking possession of the rental unit because she was not "diligent" in doing so right away. She stated that their parents did not live far, so she continued to receive her mail there instead. When she was asked why they did not submit any documentary evidence at all which would demonstrate that they actually lived in and occupied the rental unit, she stated that she believed what was submitted was "sufficient enough".

J.G. testified that the rental unit was their primary residence and that they still live there. He stated that he had his novice driver's license updated in or around October 2022, and that he received a new license in January 2023. As well, he stated that they did not submit any pictures demonstrating that they resided in the rental unit due to privacy concerns.

Tenant L.I. advised that the Landlords' father was in the driveway of the rental unit with two women on or around June 8, 2022, and he asked her if he could show the unit to the women. She testified that these women told her that they were not the Landlords' daughter-in-law. As she suspected that the Landlords were re-renting the unit, she stated that she asked G.N. what he would charge her to continue to rent, and he stated that he would accept \$2,800.00 per month. She testified that she would drive by the rental unit every other day, and would see people there who were not the Landlords. She stated that she did not take any pictures to document this as she did not want to invade the Landlords' privacy.

Tenant B.I. advised that their witness saw a tenant move into the rental unit. As well, he testified that he was at his witness' place last month and that a female, who was not either of the Landlords, came out of the rental unit to put out recycled materials.

G.N. advised that their father has nothing to do with the rental unit. As well, he stated that he never spoke with the Tenants and had no such conversation about rent.

At this point, witness D.H. was asked to enter the hearing. He testified that he has lived across from the rental unit for the last 10 years, that he has a clear view of the unit, and that he never saw the Landlords move in. He stated that he observed the Landlords paint the rental unit in the first week of July 2022, that new tenants moved into the rental unit in the second week of July 2022, and that he has seen them living there every day ever since.

L.I. advised that D.H.'s nephew rents the Landlords' parents' basement and knows their whole family. She testified that when the Landlords received D.H.'s witness statement, they were not happy and "raised havoc".

D.H. confirmed that he has met G.N. before and that G.N. threatened his nephew after he provided a statement about the Landlords not using the rental unit as per the reason on the Notice. He testified that G.N. uttered a threat that he knew "someone with a gun" and that this person "will shoot him". He advised that he spoke with G.N.'s father at the end of June 2022, and his father indicated that a new tenant, who was a massage therapist, was found to rent the unit for \$3,300.00 to \$3,500.00 per month.

G.N. advised that his father has nothing to do with the rental unit and that he has no idea of any conversations that took place with his father and D.H. He stated that he has no idea if D.H.'s nephew is his father's tenant. As well, he testified that he has never had any conversations with D.H. Neither Landlord had any questions for D.H.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy when the rental unit will be occupied by the Landlords or the Landlords' close family member.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice.

The next issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated April 20, 2022, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

At the time the Notice was served, the Landlords advised that the intention was for them to move into the rental unit and that the Notice was served in good faith. While it is possible that this may have been the case, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlords, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that “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).”

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot

convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

As noted above, the Landlords have the burden to provide sufficient evidence, over and above their testimony, to establish that they used the rental unit for the stated purpose on the Notice. As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the "purchaser or close family member" only. While the Landlords claimed that they moved into the rental unit on or around July 1, 2022, I note that they have submitted much documentary evidence that they were the rightful owners of the property, that they painted the rental unit in the first week of July 2022, and that they had utility bills put into their name. However, these do not definitively prove that the Landlords moved in to occupy the rental unit in accordance with the *Act*. While they submitted pictures of them painting the rental unit, I find it curious why they did not submit any pictures that demonstrated that they lived in the rental unit from the effective date of the Notice for a period of at least six months. The Landlords had a significant amount of time to gather this type of evidence, and it would have not only been easy to do, but would have supported their position that they actually lived there.

Moreover, while the Landlords did eventually change the address on their drivers' licenses to that of the rental unit, there was no documentary evidence submitted to support when this was actually done by J.G. I note that these changes could have very easily been initiated after they received the Tenants' Notice of Hearing package in an attempt to appear as if they moved into the rental unit.

Given that the burden is on the Landlords to prove that they moved in and lived in the rental unit for a period of at least six months after the effective date of the Notice, I find

that the Landlords have provided little compelling, persuasive, or plausible testimony or evidence that they did so. I find that this causes me to question the reliability of the Landlords' submissions on the whole. Moreover, I do not find that this scant evidence outweighs the evidence and testimony of the Tenants and D.H.

Ultimately, I am not persuaded, on a balance of probabilities, that the Landlords used the property for the stated purpose for at least six months after the effective date of the Notice. As such, I find that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$13,398.00**.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$13,498.00** 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: June 21, 2023

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Residential Tenancy Branch