



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNETC, FFT**

### Decision

The tenant's application is granted. I issue a Monetary Order of \$13,900.00.

### Introduction

The tenant applied for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property and reimbursement for the filing fee.

The landlord attended the hearing with a translator. The tenant attended.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. The landlord called a witness.

Both parties confirmed they were not recording the hearing. They provided their email addresses for the delivery of the Decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Neither party had issues regarding service. I find service complied with the Act.

I have considered the documentary evidence and all oral testimony and submissions of the parties. In this decision, I will only refer only to the admissible evidence I find relevant.

Issue(s) to be Decided

1. Is the tenant entitled to compensation for monetary loss or other money owed?
2. Is the tenant entitled to reimbursement for the filing fee?

Background and Evidence

*Overview of Claim*

The tenant requests \$13,800.00 in compensation pursuant to section 51 the Act based on the landlord failing to follow through with the stated purpose of a Two Month Notice dated June 27, 2022 (the "Notice") within a reasonable time.

The tenant also requests compensation for the \$100.00 filing fee, for a total Monetary Order of \$13,900.00

The landlord stated they moved into the unit within a reasonable time and there were extenuating circumstances.

*Tenancy Background*

The parties agreed as follows. The tenant rented the unit from the landlord starting December 1, 2012. The tenant moved out on September 1, 2022. Rent was \$1,150.00.

*Two Month Notice*

The parties agreed as follows. The landlord served the tenant with a Two Month Notice dated June 27, 2022. The Notice had an effective date of August 31, 2022. The grounds for the Notice were that the rental unit would be occupied by the landlord.

A copy of the Notice was submitted which was in the RTB form.

The parties agreed the tenant did not dispute the notice and moved out on September 1, 2022.

The tenant claimed the landlord moved into the unit on January 3, 2023. They asserted this was not a reasonable time after they moved out.

The landlord said they moved into the unit on November 15, 2022. Renovations and the landlord's health prevented the landlord from moving in earlier.

### *Landlord's Evidence*

The landlord said they started renovations as soon as the tenant moved out. Work proceeded slowly because of the landlord's health. They moved in November 15, 2022.

The landlord testified as follows:

1. The landlord served the tenant with a Two Month Notice dated June 27, 2022, as she and her spouse planned to move in as soon as possible after the tenant vacated.
2. Before the Notice was issued, the landlord had surgery (April 2022). The landlord again had surgery afterwards (July 2022).
3. The landlord submitted a confirming letter from a physician dated May 29, 2023, stating the dates of the two surgeries. The letter does not provide any details of the surgery including the reason or any disability either before or after. The landlord did not provide further evidence.
4. As soon as the tenant moved out on September 1, 2022, the landlord and her husband started renovations. The renovations include painting and installing a screen door. They did the renovations themselves.
5. To support this, the landlord submitted an invoice dated September 9, 2023, for supplies such as paint roller. They purchased some items such as a screen door on October 20, 2022, and submitted the invoice. The landlord did not describe any other renovations.
6. The landlord bought a bed on November 10, 2022, and submitted a copy of the receipt. The bed was moved into the unit soon after purchase.
7. They did not have help moving so took one item at a time to the unit. The landlord did not hire a moving company. They slowly moved items in as soon as the tenant moved out.

8. The landlord said they did the renovations as quickly as they could considering the landlord's poor health which was not described.
9. The landlord's son QH was not available to help them with the renos or moving as he was working. QH moved into the unit on January 3, 2023 with a moving truck. QH was not called as a witness.
10. The landlord did not submit evidence they hired anyone, such as carpenter, contractor or the like.
11. The landlord's renovations and poor health were extenuating circumstances preventing them from occupying the unit until November 15, 2022.
12. On November 15, 2022, ten weeks after the tenant moved out, the landlord and her spouse moved into the unit. This was the first night they slept in the unit.
13. On January 3, 2023, the landlord's son QH moved into the unit to live with them, moving his possessions with a moving company. QH was not called as a witness. The landlord continues to live in the unit.
14. The landlord acknowledged she submitted a document as evidence stating she moved into the unit on January 3, 2023. This is an undated signed written submission in the form of an unsworn Affidavit. However, this information is unintentionally incorrect. The landlord's son QH prepared the form, and the landlord signed it because he told her to. She did not understand the contents because English is not her first language.
15. The landlord provided a written signed statement from two people, one of whom (YZ) was called as a witness. The landlord has known the two people for about 20 years, and they are long time friends. Their evidence was that the landlord moved into the unit on November 15, 2023.
16. The window coverings were always closed, or windows were inaccessible. The tenant could not have looked in to see the interior. The tenant has no credible knowledge of when they moved in.

### *Tenant's Evidence*

The tenant testified to the difficulty in finding another place to live in the two months provided in the Notice. Choices were limited because of the competitive and expensive rental market. Most prices were unaffordable to her. The situation was distressing and upsetting as she had lived peacefully and happily in the unit for ten years.

The tenant resented having to move out on short notice. She would have appreciated the extra time to look for a new place to live.

The tenant believes the landlord moved in on January 3, 2023, and the unit was empty until then. She stated the landlord's evidence was made up to avoid having to pay the tenant.

The tenant claimed as follows:

1. From the time she moved out (September 1, 2022) until early 2023, the tenant returned to the unit every few days to collect her mail. She regularly drove by the building having moved to a new place not far away.
2. The tenant had lived in the unit for ten years and knew how to check for occupants without entering the house. She peeked into the unit through available windows and could clearly see the kitchen and dining areas.
3. The tenant did not see furniture, decorations, personal possessions, kitchen supplies, or anything to indicate someone was living in the unit. There were indications of some cosmetic renovations, but nothing major.
4. The unit was always dark, and no lights were ever on. She went to the back of the unit regularly to look for parked cars. There were never any parked vehicles in the parking spot for the unit.
5. From her observations, the tenant concluded no one moved into the unit after she moved out until January 2023.
6. The tenant saw the moving truck on January 3, 2023, come to the unit. She concluded the landlord moved in that day. She surmised this was the move in date.

7. The tenant does not believe the landlord's evidence including the witnesses' version of events that they moved in November 15, 2023. The tenant never heard of these people (the witnesses) until shortly before the hearing despite having cordial relations with the landlord during the ten year tenancy. The landlord acknowledged the witnesses are old friends. The tenant believes they are not credible or reliable and are helping out an old friend avoid a financial obligation.
8. The landlord did not call as a witness any independent person without family or friendship connection with the landlord. The landlord has not proven that they carried out renovations or had health issues which were extenuating circumstances preventing them from moving in.
9. The tenant concluded the unit was not occupied until January 3, 2023, and she is entitled to 12 months' rent as compensation under the Act.

### *Summary*

In summary, the tenant requested 12 months' rent as compensation as the landlord did not carry out the purpose stated in the Notice in a reasonable time.

The landlord claimed they moved in within a reasonable time, November 15, 2023. In any event there were extenuating circumstances preventing them from moving in earlier. The landlord carried out renovations which took a long time because of the landlord's health. In short, these factors were extenuating circumstances under the Act and the landlord does not have to pay the tenant 12 months' rent as compensation.

### Analysis

#### *Credibility*

I find the tenant provided credible testimony in all aspects. Her version of events is matter of fact and believable.

I believe the tenant's description of her distress at having to leave the unit on short notice where she had lived for ten years.

The tenant's curiosity about whether the landlord moved in is reasonable in the circumstances. I accept the tenant's recounting of events, including her returning to the

unit regularly to pick up her mail at which time she checked on what was going on in the unit. So, she looked in as best she could and checked for cars. I trust she drove by the unit frequently and observed there were never lights on. I believe the tenant when she testified her investigations led her to conclude no one lived in the unit until January 3, 2023.

I give considerable weight to the tenant's testimony and find her version of events the most credible.

### *Burden of Proof*

The landlord has the onus of proving they moved in within a reasonable time or there were extenuating circumstances.

The burden of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

In this case, the landlord provides a version of events in one way, and the tenant provides an equally probable version of events. In such cases, the landlord has not met the onus to prove they have complied with the Notice.

### *Compensation*

The Notice dated June 27, 2022 was issued under section 49(3) of the Act. This section says the landlord may end the tenancy if they intend to use the property. In this case, the landlord said in the Notice they intended to move in.

Section 51 of the Act sets out compensation due to a tenant served with a notice to end tenancy issued under section 49 of the Act. The landlord must pay 12 times the monthly rent if the landlord does not do **both** of the following:

1. The first is that the landlord must do what they say they are going to do **within a reasonable period** after the effective date of the Notice.

In this case, the effective date of the Notice is August 31, 2022, and the tenant moved out the next day, September 1, 2022. So, the landlord must move in within a reasonable period after September 1, 2022.

2. Secondly, the landlord must prove is that they lived in the unit for at least 6 months beginning a reasonable time after the effective date.

However, if the landlord can show there was extenuating circumstances, an award will not be made against the landlord.

### *Reasonable Time*

The landlord said this is the timeline:

<b>Date</b>	<b>Details</b>
September 1, 2022	Tenant moves out
September 1 to November 15, 2022	L conducts renovations and moves items in
November 15, 2022	Landlord moves in
January 3, 2023	Landlord's son moves in

The tenant denies the landlord's timeline is accurate. She says the following events are correct:

<b>Date</b>	<b>Details</b>
September 1, 2022	Tenant moves out
September 1, 2022 to January 3, 2023	Minor cosmetic renovations take place
January 3, 2023	Landlord and landlord's son moves in

I have carefully considered the parties' evidence. I accept the tenant's evidence that she went to the unit regularly, conducted investigations, and saw no evidence the landlord moved in until January 3, 2023.

Although the landlord's witnesses say the landlord moved on November 15, 2023, I do not accept this testimony as reliable in the circumstances.

I find it most likely the landlord retroactively created a timeline to favour their situation and undermine the tenant's claims while avoiding accountability.

Considering all the evidence, I find the landlord moved into the unit on January 3, 2023/



### *Reasonable Time*

As stated earlier, the landlord must do what they say they are going to do within a reasonable time after the effective date of the Notice.

In this case, the effective date of the Notice is August 31, 2022, and the tenant moved out the next day. So, the landlord must have moved in within a reasonable period after September 1, 2022.

*Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy* addresses the definition of reasonable time. The Guideline says a reasonable period is usually about 15 days. The period may be longer depending on the circumstances.

I have found the landlord moved on January 3, 2023, four months after the tenant moved out. I find the landlord did not move in within a reasonable time.

### *Extenuating Circumstances*

*RTB Policy Guideline 50* states an arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances. Extenuating circumstances are those that stopped the landlord from complying with the Act.

That is, they prevent the landlord from moving in within a reasonable period or, from using the rental unit for at least 6 months.

The landlord has the onus to prove extenuating circumstances under section 51(3) of the Act.

The Guideline says there 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.

### *Renovations as Extenuating Circumstances*

The landlord testified to painting, the installation of a screen door and the like. I find the renos as described were straight forward and cosmetic. I do not find it credible that the superficial work described took long enough to significantly delay moving in.

Therefore, I find the landlord has not established there were renovations which amounted to extenuating circumstances preventing the landlord from moving in within a reasonable time.

### *Health as Extenuating Circumstances*

The landlord said her two surgeries before the vacancy date prevented her from following through with the Notice within a reasonable time. They moved in as quickly as they could given her health limitations. The landlord said these were extenuating circumstances.

The Notice was issued June 27, 2022. The landlord had undefined health issues requiring surgery in April 2022, before the issuance of the Notice and again in July 2022 after the Notice was issued.

I find the landlord's health issues which affected when she could carry out renovations and move into the unit, did not arise between June 27, 2022, when the Notice was issued, and September 1, 2022, when the tenant moved out. The health issues likely existed before the Notice was issued.

In the absence of any evidence to support the testimony of the landlord that there was a sudden and unexpected decline in health after the Notice was issued preventing them from doing the renos and moving in, I am not satisfied the landlord has proven extenuating circumstances under this heading.

I reject the landlord's claim that her health condition amounted to extenuating circumstances.

### *Findings*

I find the landlord did not move in within a reasonable time and there were no extenuating circumstances.

I find section 51(2) of the Act applies and the landlord must pay the tenant 12 times the monthly rent being \$13,800.00.

As the tenant was successful in the Application, I award reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the Act.

In total, the tenant is entitled to \$13,900.00 and I issue the tenant a Monetary Order in this amount.

### Conclusion

The Application is granted.

The tenant is entitled to an award of \$13,900.00 and I issue a Monetary Order in this amount.

This Order must be served on the landlord and, if the landlord does not comply with the Order, it may be filed and enforced in the Courts of the Province of British Columbia.

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 13, 2023

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Residential Tenancy Branch