



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Code: MNDCT

### Introduction

The Tenant seeks compensation against the Landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”).

### Issue

Is the Tenant entitled to compensation?

### Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

It should be noted that the Landlord’s former legal counsel dialled into the hearing and briefly explained on the record that they no longer represent the Landlord. They were then excused from the hearing, after which the Tenant and the Landlord attended.

## **The Facts**

The tenancy began on October 20, 2016, and ended on May 1, 2022. Monthly rent was \$1,160.00. The Landlord issued a notice to end tenancy for landlord's use of property and the Tenant vacated the rental unit on May 3, 2022.

The Tenant testified under oath that they moved down the street and happened to observe the rental unit being empty. It was "dormant" for "month after month after month" and then discovered an advertisement in mid-October 2022 for the rental unit being available for rent. Rent was listed at \$1,900. The Tenant argued that the Landlord must have fully intended to "kick me out" and re-rent the property for higher rent.

The Landlord testified under oath that it was fully her intention to move into and occupy the rental unit. However, during renovations being done the Landlord realized that "I just didn't think it would work" for the Landlord to live in the property. The Landlord testified that the location was "too noisy" and that the traffic was particularly heavy. The Landlord, in her late 80s, lives at home during the day and would not have found the living to be particularly tolerable.

What is more, the strata would not permit the Landlord to place a shed on the property. Nor would the Landlord have been able to have any privacy using the back patio. There were also parking limitations had the Landlord moved into the rental unit. In summary, the Landlord explained that "in the end, [I] just didn't want to move in." The Landlord did not at any point occupy the rental unit.

## **The Law and Analysis**

This application for compensation is made under section 51(2) of the Act, which states:

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

There is no dispute that the rental unit was not occupied by the Landlord for a period of six months after the tenancy ended. Indeed, the Landlord testified that she never moved into or occupied the rental unit. Thus, the Landlord is *prima facie* required to pay compensation to the Tenant pursuant to section 51(2) of the Act.

However, what I am required to consider is whether the Landlord is excused from paying this amount pursuant to subsection 51(3) of the Act. This section states that

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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The term “Extenuating circumstances” is not defined in the Act or the regulations. However, *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* (pages 5-6) provides the following interpretation of the phrase, and by way of examples:

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.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

The common element in extenuating circumstances is foreseeability or control, or both.

In the application before me, the Landlord ought to have acted reasonably and with due diligence in determining whether the rental unit would have been conducive to her lifestyle *before* issuing a notice to end tenancy. Neither the traffic noise, noise in general, the patio privacy, or the strata prohibition on installing a shed, are factors that would have been unforeseeable had the Landlord acted with a reasonable level of due diligence.

While traffic noise, strata rules, and a lack of privacy are issues outside the Landlord's control, the Landlord could have foreseen the *existence* of such factors had she tried to determine whether such factors might hinder her ability to occupy the rental unit. What is more, the Landlord resided in a unit within the same larger multi-unit residential property in which the rental unit was located; I find it difficult to accept that the Landlord would not have been able to determine traffic noise, privacy, or strata rules before issuing the notice to end tenancy.

In summary, the Landlord's decision not to move into the rental unit, based on factors that a reasonable person would or ought to have known with an exercise of due diligence, is not an extenuating circumstance. For this reason, I find that there existed no extenuating circumstances under section 51(3) of the Act by which to excuse the Landlord from paying the amount required under section 51(2) of the Act.

Pursuant to section 51(2 ) the Landlord must pay the Tenant \$13,920.00 (an amount equivalent to twelve times the monthly rent).

A monetary order in this amount is issued with this decision to the Tenant. The Tenant must serve a copy of the order upon the Landlord by any method of service permitted under section 88 of the Act.

The Tenant's claim for the cost of the title search is dismissed. Costs related to research in support of a party's application are not recoverable under the Act.

### Conclusion

**The application is hereby granted.**

**The Tenant is granted a monetary order for \$13,920.00.**

This decision is final, binding, and made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: July 7, 2023

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Residential Tenancy Branch