



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing was a joiner. Two separate Applications for Dispute Resolution (Applications) were filed by two separate groups of tenants occupying different portions of the same home under separate tenancy agreements with the same landlord. The tenants of the upper unit, S.O. and A.C., and the tenants of the lower unit, P.S. and P.P., filed separate Applications under the *Residential Tenancy Act* (the "Act") for:

- Compensation under section 51(2) of the Act because their tenancies ended due to a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) and they do not believe the purchaser used the rental unit for the required purpose or duration; and
- Recovery of their respective filing fees.

The Applications were joined by the Branch under section 2.10 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). The hearing was convened by telephone conference call at 1:30 pm on August 14, 2023, and was attended by the tenants and the purchaser. All testimony provided was affirmed.

As the purchaser acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and raised no concerns regarding service, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings.

The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary Matters

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my decision and any supporting order(s).

During the hearing, the purchaser and tenants P.S. and P.P. mutually agreed to settle their dispute as follows:

1. The parties agree the purchaser owes the tenants \$15,600.00.
2. The parties agree that this constitutes full and final settlement of all matters between them in relation to the tenancy.

I order the parties to comply with the terms of the mutual settlement agreement reached between them, as described above.

In support of the settlement described above, and with the agreement of the parties, I grant the tenants P.S. and P.P. a \$15,600.00 Monetary Order. This order must be served on the purchaser as soon as possible. Should the purchaser fail to comply with this order, it may be filed in the Small Claims Court of British Columbia and enforced as an order of that Court.

Since the tenants P.S. and P.P. had settled their dispute with the purchaser, they left the teleconference. The hearing then proceeded only on the matter of the Application filed by S.O. and A.C.

### Service of Evidence

The parties agreed to receipt of each other's documentary evidence. However, the tenants stated that the purchaser unreasonably withheld their evidence, which was only received on August 8, 2023, giving them little time to respond. The purchaser stated that their evidence was delayed because it took time to gather it all, and they were attempting to settle this matter without the need for a hearing. Although the tenants agreed that settlement attempts had been made, they characterized them as only one phone call a month prior wherein the purchaser made an unreasonably low offer.

As the parties agreed that settlement discussions occurred up to one month prior to the hearing, I am satisfied that these discussions contributed to the purchaser's delay in serving documentary evidence. As a result, I am not satisfied that their documentary evidence was unreasonably withheld. Further to this, I am also satisfied that the tenants had a reasonable amount time to review, consider, and prepare a response to it for the hearing, despite its lateness, as it was received only 2 days late. As a result, and pursuant to rule 3.17 of the Rules of Procedure, I accepted the purchaser's documentary evidence for consideration, as I was satisfied that doing so did not unreasonably prejudice one party or result in a breach of the principles of natural justice.

### Issue(s) to be Decided

Are the tenants S.O. and A.C. entitled to compensation under section 51(2) of the Act?

Are the tenants S.O. and A.C. entitled to recovery of their filing fee?

### Background and Evidence

The parties agreed that the tenancy ended on June 26, 2022, as the result of a Two Month Notice served on the tenants by their previous landlord, as the property was sold to the purchaser who requested that the Two Month Notice be served so that they or their spouse could occupy the property. They also agreed that \$1,700.00 in rent was due each month at the time the tenancy ended and that the effective date of the Two Month Notice was May 31, 2022.

The purchaser stated that subjects were removed on March 9, 2022, at which time they requested that the previous landlord serve the Two Month Notice. The purchaser stated that they then took possession of the rental unit on June 1, 2022, becoming the tenant's landlord.

Although the purchaser acknowledged that neither they, nor their spouse, ever occupied the rental unit, they argued that they were prevented from doing so due to extenuating circumstances and therefore they should be exempted from owing compensation pursuant to section 51(3) of the Act. They stated that at the time they requested the Two Month Notice be served, their spouse and daughter were already living in a different property they own in the same community as the rental unit. The purchaser stated that as the place occupied by their spouse and daughter was not ideal for their family, they and their son were living in another community and commuting back and forth, which is why the home in which the rental unit is located was purchased.

The purchaser stated that they, their spouse, and their daughter were going to live in the upper portion of the home, which is the rental unit rented to S.O. and A.C. under their tenancy agreement, and that their son was going to occupy the lower portion of the home, which was rented to P.S. and P.P. under a different tenancy agreement. The landlord stated that their son's plans changed, and they did not move in. They also stated that they, their spouse, and their daughter were also not able to move in due to the following circumstances, which they considered to be extenuating.

The purchaser stated that their spouse and daughter had to swap homes with one of their other tenants who was facing difficult circumstances. As a result, the purchaser stated that their spouse and daughter moved from the studio on that property to the upper portion of the main home, and the tenant of the main home moved to the studio. The purchaser stated that their daughter, who has a "high functioning mental disability", started suffering from anxiety and difficulty in school due to first having to move to that community, and then having to relocate from the studio to the upper portion of the main home. The purchaser stated that their daughter had to start counselling and they could not move into the rental unit as this would exacerbate their daughter's condition. As the rental unit was sitting vacant, the purchaser stated that a refugee family from the Ukraine was moved in at the end of August 2023.

The tenant's called the purchaser's testimony regarding extenuating circumstances into question, stating that no evidence has been submitted to support any of the statements made. The tenants stated that their previous landlord as well as the real estate agent for their previous landlord warned them that the purchase seemed suspicious, and that they did not suspect that the purchaser planned to occupy the property. The tenants stated that they also received a text on July 16, 2023, from a person called "Miller", whom they stated was the purchaser's real estate agent, that was clearly intended for the purchaser. The tenants stated that in this text message, which they provided for my consideration, the purchaser's real estate agent was inquiring if the rental unit was available for their friend to rent. They stated that when they identified to the real estate agent that the text message was sent to them in error, the real estate agent did not understand that they had the wrong phone number, and provided an excerpt from a previous text message chain with the purchaser wherein the purchaser advised their realtor that it was available for rental, but they were hesitant to post it.

The tenants argued that this demonstrates not only that the purchaser never planned to occupy the rental unit, but that they always planned to re-rent it and knew that they might get caught re-renting it instead of occupying it if they posted it for re-rental. The tenants stated that just over two weeks after they vacated, the purchaser was already scheming to re-rent the rental unit at a 30% increase. The Tenants also pointed to a Facebook post they state was up between July 27, 2023 – October 2, 2023, wherein the purchaser advertised their rental unit for rent.

Although the purchaser stated that the Facebook post was about a different rental unit, the tenants stated this is inaccurate as the photos from the advertisement are the same as the photos from their move-out condition inspection. The purchaser also stated that only the lower unit, which was not rented to the tenants, was advertised, which the tenants denied.

### Analysis

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act because the purchaser or their close family member wishes to occupy the rental unit, the purchaser must pay the tenant an amount that is equal to 12 times the monthly rent if 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 the rental unit is not used for that stated purpose for at least six months' duration thereafter.

The purchaser stated at the hearing that neither they nor their spouse ever occupied the rental unit, and that a refugee family from the Ukraine began occupying it at the end of August 2023. As a result, I find that steps were not taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, and that the rental unit was not used for that stated purpose for at least six months' duration thereafter. Having made this finding, I will now turn to whether the purchaser is exempted under section 51(3) of the Act, from owing the compensation set out under section 51(2) of the Act.

Although the purchaser argued that they were “forced” to switch units with their tenant at another property, I am not satisfied this is the case. While the purchaser and their family members may have done so, I am satisfied that they did so by choice. Further to this, no evidence was submitted by the purchaser to substantiate their claims that their daughter has a “high functioning mental disability”, that their daughter developed anxiety related to moving, or that their daughter’s anxiety and high functioning mental disability” was such that neither the landlord nor their spouse were able to move to the rental unit.

Finally, I find the documentary evidence before me from the tenants compelling. A side-by-side comparison of photographs allegedly taken by the tenants at move out and

photographs from a Facebook advertisement of the rental unit satisfy me that the rental unit was in fact posted by the purchaser for re-rental on Facebook shortly after they vacated. Texts from a person named “Fran” also satisfy me that shortly after the tenants vacated, the purchaser advised “Fran” that the re-rent the rental unit, as well as the lower rental unit, were available at \$2,200.00 per month and \$1,600.00 per month, respectively, plus utilities. I am also satisfied by this text chain that the purchaser was aware of section 51(2) of the Act, as they indicated while discussing the price of the units, that they were “very hesitant to advertise”. Based on the documentary evidence from the tenants, specifically an advertisement for a realtor, that “Fran” is a real estate agent and more likely than not, the real estate agent used by the purchase to purchase the rental unit.

Based on the above, I find that not only did the landlord fail to use the rental unit as required, but that they never planned to occupy it themselves or have it occupied by their spouse. I also find that no extenuating circumstances prevented them or their spouse from occupying it. As a result, I find that they are not excused under section 51(3) of the Act from owing the compensation set out under section 51(2). The tenants are therefore awarded \$20,400.00 pursuant to section 51(2) of the Act. As the tenants were successful, I also award them recovery of their \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the tenants a Monetary Order in the amount of \$20,500.00 and I order the purchaser to pay this amount to the tenants.

### Conclusion

I grant the tenant’s application seeking compensation under sections 51(2) and 72(1) of the Act. I order the purchaser to pay this amount to the tenants.

Pursuant to section 67 of the Act, I grant the tenants a Monetary Order in the amount of **\$20,500.00**. The tenants are provided with this Order in the above terms and the purchaser must be served with this Order as soon as possible. Should the purchaser 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 has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the delay.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: September 25, 2023

---

Residential Tenancy Branch