# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

## DECISION

Dispute Codes MNETC, FFT

Introduction

On November 16, 2022, the Tenants made an Application for Dispute Resolution 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*.

On November 24, 2022, this matter was set down for a hearing on August 29, 2023, at 1:30 PM. This Application was then subsequently adjourned for reasons set forth in the Interim Decision dated August 30, 2023, and set down for a final, reconvened hearing on September 19, 2023, at 11:00 AM.

Tenant M.H. attended the hearing, with T.Z. attending as counsel for the Tenants. Both Landlords attended the hearing as well, with A.F. attending as counsel for the Landlords, and A.H. attending later as a witness for the Landlords.

At the outset of the final, reconvened 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, with the exception of T.Z. and A.F., provided a solemn affirmation.

As noted in the Interim Decision, all parties' evidence will be accepted and considered 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 12 months' 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.

At the original hearing, the parties agreed that the tenancy started on June 1, 2020, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on May 31, 2022, pursuant to the Notice. Rent was established at an amount of $2,400.00 per month and was due on the first day of each month. A security deposit of $1,200.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that the Notice was served on March 10, 2022, by registered mail. The reason the Notice was served was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of the individual's spouse). In addition, the Landlords indicated that it would be "The father or mother of the landlord or landlord's spouse" that would specifically be moving into the rental unit. The effective end date of the tenancy was noted as May 31, 2022, on the Notice.

A.F. summarized the Landlords' situation by referring to documentary evidence submitted, and she advised that the Landlords had every intention of the mother moving into the rental unit when the Notice was served. Landlord S.M. confirmed that her mother was sick, and that her parents were not getting along due to unresolved issues. These issues caused her mother to decide, in February 2022, that she needed her own space; however, as she was unable to find suitable, alternative accommodation, S.M. offered the rental unit as a place for her mother to stay. S.M. testified that she got married in May 2022, in Hawaii, and while there, her parents had reconciled their differences and elected to stay in Hawaii longer to work on their relationship. She stated that her parents then decided to return home and attempt to live together and resolve their differences. She acknowledged that she did not anticipate their separation nor their reconciliation.

Landlord B.D. advised that they contemplated what to do after this development, and a tenancy agreement was signed with the mother, where a sub-tenancy was then created for his sister-in-law to live in the rental unit. He explained that this was done in case there was an unforeseen event, so that the Landlords could have quick and easy access to the rental unit without having to displace someone that was not family.

T.Z. directed questions to S.M., but this interaction is not detailed in this Decision as it was mostly irrelevant to the main issue that needed to be addressed.

A.F. submitted that the change in events involving S.M.'s parents was an extenuating circumstance as it was outside of the control of the Landlords, and they had no control of the mother's decision.

S.M.'s mother, L.M., then attended as a witness and testified that she had been married for 35 years, but the status of that marriage, in February 2022, was described as so "terrible" that she wanted to leave the home she owned with her husband. She advised that she had a conversation with S.M. on March 5, 2022, and it was agreed that she could move into the rental unit as it would allow her to have her own space, but still be close to her family. She stated that she started packing in April 2022, and helped S.M. with the wedding. She then stated that in May 2022, at the wedding, she reconnected with her husband, and they decided to stay in Hawaii longer. She testified that on May 26, 2022, she notified the Landlords of their intention to reconcile. She stated that her other daughter had been looking for a place to live, so the other daughter moved into the rental unit instead. She advised that the circumstances with her husband were not planned and were not foreseeable.

T.Z. directed questions to L.M., but this interaction is not detailed in this Decision as it was mostly irrelevant to the main issue that needed to be addressed.

A.F. then directed questions to L.M., but this interaction is not detailed in this Decision as it was mostly irrelevant to the main issue that needed to be addressed.

At the final, reconvened hearing, A.F. again summarized the events surrounding the reason for service of this Notice, and emphasized that the Landlords' intention was that L.M. would be moving in.

S.M.'s sister, A.H., then testified that her parents were struggling as they were fighting, and their marriage was toxic, so she attempted to help her mother find a new place to live. It was determined that the best option would be for her mother to move into the rental unit, and she helped her mother organize this in April 2022. She confirmed that her parents then re-connected in May 2022 at her sister's wedding in Hawaii to see if they could salvage their marriage. She advised that S.M. contacted her as her lease happened to be concluding as well, so the rental unit was offered to her instead. She confirmed that she then sub-let the rental unit from her mother so that her mother could still move in in the event that her parents could not work out their differences. She stated that the situation with her parents was unforeseen and could not be anticipated.

T.Z. directed questions to A.H., but this interaction is not detailed in this Decision as it was mostly irrelevant to the main issue that needed to be addressed.

A.F. made submissions on a number of points that were mostly irrelevant to the main issue that needed to be addressed. However, she emphasized that the decision not to move into the rental unit was the mother's, not the Landlords', and thus, was an extenuating circumstance outside of the Landlords' control. This was not a matter of the Landlords changing their own mind. She noted that the purpose of Section 51 of the *Act* is to punish parties that are using the Notice to benefit financially, and she submitted that it is not within the purview of the *Act* to dictate family issues. She cited Policy Guideline # 50 which outlines what extenuating circumstances would constitute, and it is her position that this is not an exhaustive list. She advised that it would be patently unreasonable to hold the Landlords responsible for the mother's decision on this family matter. As well, she submitted that the *Act* does not indicate that it would be the Landlords that would be held accountable for this outcome based on another person's change in their mind.

The Tenant made submissions about the circumstances leading up to service of the Notice; however, much of these submissions were not relevant to the issue that needed to be addressed. However, he confirmed that the Landlords' mother did not move into the rental unit.

A.F. then directed questions to the Tenant, but this interaction is not detailed in this Decision as it was mostly irrelevant to the main issue that needed to be addressed.

T.Z. reiterated that the Landlords' mother did not move into the rental unit after the effective date of the Notice, and he noted that Policy Guideline # 50 does not consider a change of mind to be an extenuating circumstance. He submitted that the mother did not have a health concern that prevented her from moving in, but it was her own choice as it was no longer a convenient option.

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 in respect of a rental unit where the Landlords or a close family member of the Landlords, intend in good faith to occupy the rental unit.

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.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that this was a valid Notice.

The second 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 March 10, 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*
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> > *(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 the mother to move into the rental unit and that the Notice was served in good faith. Regardless, 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 “Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E).”

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.
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> 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.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances:

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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 before 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 a rental unit and they change 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.

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 father or mother of the landlord or landlord's spouse" only. Furthermore, the consistent and undisputed evidence is that neither the father or mother of the landlord or landlord's spouse ever moved into the rental unit after the effective date of the Notice. As such, I am satisfied that the rental unit was clearly not occupied by the appropriate persons, as intended by the *Act* when this type of Notice is served, and as a result, the Landlords failed to use the rental unit for the stated purpose. Consequently, the only thing I must consider now are extenuating circumstances.

It is evident that the Landlords' position is that the change in the mother's mind about her own marital situation was the reason she did not move in, and that this change in the mother's mind presented an extenuating circumstance for the Landlords. While I acknowledge the mother's personal situation and the nuances that can arise from relationships, these are inherently fluid situations. Policy Guideline # 50 outlines very clear examples of what would be considered extenuating circumstances, and while it was the mother's decision not to move in, the possibility of reconciliation, while seemingly improbable at the time, was an outcome that could possibly have been anticipated by the Landlords. Furthermore, while I acknowledge that S.M.'s parents were attempting to repair their relationship, it was entirely plausible for them to have done so in the rental unit, thereby satisfying the reason the Notice was served in the first place.

Given my assessment above, I do not accept that the mother's change in mind was an unforeseen or unpredictable outcome that would constitute an extenuating circumstance for the Landlords. As such, I am not satisfied that there were any extenuating circumstances that prevented the Landlords from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Ultimately, 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 **$28,800.00**.

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 **$28,800.00** 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: October 18, 2023

Residential Tenancy Branch