



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for the equivalent of one month's rent payable under the tenancy agreement under section 51(1.2) of the Act

This hearing also dealt with a linked application filed by the Tenant under the Act for:

- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Tenants said the Proceeding Package was served on the Landlords on or about November 23, 2024 by courier. The Landlords acknowledged receipt of the Proceeding Package, and did not raise any issues with respect to service of these documents. Therefore, I find the Landlords were served with the Tenants' Proceeding Package in accordance with the RTB order of December 17, 2024, the fifth day after the mailing.

### **Service of Evidence**

The Landlords acknowledged receipt of the Tenants' evidence and did not raise any concerns regarding service. Accepting this, I find the Landlords were sufficiently served in accordance with the Tenants' application under section 71(2) of the Act.

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### **Preliminary Matter**

At the outset of the hearing, the Tenants said they have received compensation equivalent of one month's rent from the Landlord and requested to withdraw the file listed on the cover page of this decision. The Landlord consented to the withdraw.

Based on the submissions of the parties, I dismiss the Tenants' application for compensation for the equivalent of one month's rent payable under the tenancy agreement under section 51(1.2) of the Act.

I will only adjudicate on the Tenants' application for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act in this decision.

### **Issues to be Decided**

1. Are the Tenants entitled to a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy?
2. Are the Tenants entitled to recover the filing fee for this application from the Landlord?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began on October 1, 2020, with a monthly rent of \$1,250.00 at the end of the tenancy. There is a security deposit in the amount of \$625.00.

The rental unit was the basement of a detached home. The Landlords resided on the upper floor.

The Landlords issued a Two Month Notice with an effective date of April 30, 2024, and the reason stated in the notice was that the rental unit will be occupied by the landlord or the landlord's spouse. The Tenants confirmed they received the notice from the Landlords. A copy of the Two Month Notice was submitted into evidence by the Tenant.

The parties agreed that the Tenants vacated the rental unit on March 31, 2024.

The Landlords testified that a Two Month Notice was served on the Tenants so Landlord R.R. can occupy the rental unit as the Landlords were having marital issues.

At the hearing, when I asked the Landlords when Landlord R.R. moved into the rental unit, the Landlords said it was before the Landlords' altercation on April 26, 2024. The

Landlords then said Landlord R.R. moved into the rental unit a few days after the Tenants left on March 31, 2024.

The Landlords said Landlord R.R. moved out of the rental unit in mid-September 2024 and moved back to the upper floor.

In the Landlords' written statement, the Landlords said when Landlord R.R. was living in the rental unit, Landlord R.R. opened a bank account in his sole name and did not contribute any of his income to the family, and therefore, Landlord A.R. posted an advertisement on Facebook Marketplace to rent out the rental unit. The Tenants submitted into evidence a Facebook advertisement of the rental unit dated September 20, 2024.

The Landlords said the photos of the advertisement were taken on or about September 20, 2024. The Landlords said the photo of the kitchen is evidence that Landlord A.R. occupied the rental unit as there are some kitchen towels and a mat. The Landlords further submitted into evidence a photo of an empty bedroom. The Landlords said Landlord A.R. removed a mattress in that room so Landlord R.R. can take photos of the room.

The Landlords said the rental unit has not been rented out and remains vacant on the date of the hearing.

The Tenants said the photos from the advertisement clearly show the rental unit was vacant, and further said that they drove past the rental unit a few times and can see from the front windows of the house that the rental unit was vacant. In July 2024, the Tenants saw Landlord R.R. access the property through the front door, which leads to the main floor, rather than the back door, where the entrance of the rental unit is, and therefore do not believe Landlord R.R. was indeed living in the rental unit as claimed.

## **Analysis**

### **Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?**

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months' duration if the notice to end tenancy was issued on or before April 2, 2024.

Section 51(3) of the Act says that a landlord may be excused from paying compensation if there were extenuating circumstances that prevented the landlord or the purchaser from fulfilling the requirements set out in section 51(2) of the Act.

The onus is on the landlord to prove that they fulfilled, within a reasonable time period of the effective date of the Two Month Notice, the stated purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

Although the Landlords claimed that Landlord R.R. moved into the rental unit a few days after the Tenants left on March 31, 2024, and moved out around mid-September 2024, I find that Landlord R.R. did not in fact move in the rental unit, and certainly did not occupy it for 6 months. In reaching this conclusion, I have found particularly compelling, the testimony of the Tenants. I accept that more likely than not that the rental unit was vacant after the Tenants moved out and Landlord R.R. did not occupy the rental unit.

Despite the Landlord's assertion the Landlord R.R. moved in the rental unit and that the photo of the kitchen proves that Landlord R.R. occupied the rental unit as there are some kitchen towels and a mat on the floor, I did not find this to be persuasive. I find there should have been more of Landlord R.R.'s belongings in the rental unit if it was occupied as claimed. Furthermore, I find the photo of the empty bedroom further shows that the rental unit was unoccupied. Although the Landlords said the mattress was removed so they can take photos of the room, I find that to be unconvincing.

Overall, I prefer the evidence of the Tenants as I find the testimony of the Landlords to be vague and inconsistent.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord did not accomplish the stated purpose in the Notice to End Tenancy, and that the Tenants have established their claim for compensation related to a notice to end tenancy.

Therefore, pursuant to section 51(2) of the Act, I find the Tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the Tenants a monetary award in the amount of \$15,000.00 (\$1,250.00 x 12 months).

**Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$15,000.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act	\$15,000.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$15,100.00</b>

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: April 3, 2025

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Residential Tenancy Branch