



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, FFT**

### Introduction

On September 20, 2020, the tenant applied for dispute resolution under the Residential Tenancy Act (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The property owner did not attend and was represented by her spouse RB (“the landlord”). The landlord and tenant were present at the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The landlord and tenant were provided with an opportunity to ask questions about the hearing process. The parties provided affirmed testimony and were provided with the opportunity to present oral testimony and to make submissions during the hearing. The parties did not raise any issues regarding service.

The parties submitted considerable documentary evidence including written submissions. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch rules of procedure. Only key admissible evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the tenant entitled to reimbursement of the filing fee?

### Background and Evidence

The landlord and tenant provided testimony agreeing that the monthly tenancy began on November 15, 2017. Monthly rent was \$1,900.00. At the beginning of the tenancy, the tenant provided a security deposit the return of which has been settled by the parties at the end of the tenancy. The tenant submitted a copy of the tenancy agreement.

The landlord and tenant testified that the tenancy ended when the tenant vacated the rental unit on November 30, 2018 after receiving a Two Month Notice to End Tenancy for landlord's Use of Property from the landlord ("the Two Month Notice").

The tenant provided a copy of the Two Month Notice which is in the standard RTB form. The Two Month Notice is dated October 31, 2018 and was served personally on the tenant that day; the Notice has an effective date of December 31, 2018. The reason cited for ending the tenancy is:

The rental unit will be occupied by the landlord or the landlord's close family member spouse or a close family member.

The Two Month Notice provides information for tenant who receives the Notice. The Notice provides that a tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a tenant does not file an Application within 15 days, the tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The tenant accepted the Two Month Notice and moved out of the rental unit on November 30, 2020 after providing the required notice of her intention to leave prior to the effective date. The tenant testified that she received compensation in the amount of one month's rent as required under the Act.

The tenant testified that the landlord issued the Two Month Notice in bad faith because the landlord did not move into the rental unit and use the property for a six-month period.

The parties agreed that the landlord entered into an agreement to sell the unit on November 26, 2018 and the sale was concluded in March 2019. The landlord testified that neither the landlord nor a close family member occupied the unit from the time the tenant vacated until the unit was sold.

The landlord acknowledged that the unit was listed for sale in October 2018. However, the landlord testified that the unit was too expensive for them and they had developed a plan to move in as part of a financial strategy. The landlord testified that they cancelled the Two Month Notice within an hour of serving the tenant with the Notice.

The parties agreed that they had a chance encounter in a grocery store within an hour of service of the Two Month Notice on October 31, 2018. The parties' version of what took place at that meeting was dissimilar.

The landlord testified as follows. The female owner and her husband (her agent at the hearing) were together in the store. The landlord testified they told the tenant that the Two Month Notice was "rescinded". The male landlord testified he told the tenant, "I don't know what we are going to do. All we need to do is get one person into the place [the unit] and then we'll see." The parties agreed the landlord gave the tenant a schedule of times when the unit was to be available for viewing which the tenant signed at the landlord's request.

The male landlord testified the female landlord told the tenant during the meeting that the Two Month Notice was cancelled. The landlord testified that the intended effect of the combined statements was to notify the tenant that the Notice was cancelled, if not then, as soon as the single referenced viewer saw the unit. The landlord stated that no confirmation in writing was sent to the tenant.

The tenant vehemently denied that the landlord ever told her that the Notice was cancelled. She stated that the viewing schedule, given to her at the meeting on October 31, 2018, was clear indication that the landlord was still offering the unit for sale and the Notice was still in effect.

The tenant testified she was never informed that the Two Month Notice was cancelled. Viewings of the unit continued. The tenant testified she was "seriously stressed" by receiving the Two Month Notice. She stated that she has a chronic, long-term illness which required a home with wheelchair access and usability. She testified that receiving the Notice "turned my world upside down", "I crashed", and "I wasn't thinking straight". She testified to making diligent efforts to find a suitable place to live given her disability, planned upcoming surgeries, and wheelchair accessibility needs.

The landlord testified that on November 26, 2018 they agreed to sell the unit. with a closing date in March 2019. The purchaser wanted to occupy the unit. Accordingly, the landlord served the tenant immediately with a second Two Month Notice ("the second Notice"). The second Notice is effective January 31, 2019 and is based on proposed occupancy by the purchaser. The landlord explained that a second Notice was necessary as the first Two Month Notice had been withdrawn.

The tenant testified that she had already given her notice to the landlord that she was moving out at the end of November 2018. She testified she did not understand why the landlord gave her the second Notice after they agreed on November 26, 2018 to sell the unit effective March 2019. The tenant stated that the landlord was aware she was leaving at the end of November 2018 and the second Notice was an effort to avoid paying 12 months rent compensation to the tenant because the landlord sold the unit

instead of living in it.

The landlord denied this interpretation. They replied that the tenant was well aware that the Two Month Notice was cancelled the same day it was served and that a second Notice was now required.

The landlord was provided an opportunity to make submissions on whether there were circumstances that prevented the landlord from using the rental unit for the stated purpose for at least 6 months duration after the effective date of the notice. The landlord stated there were no such circumstances other than the sale of the unit.

The tenant is seeking compensation of \$22,800.00 which is twelve months rent payable under the tenancy agreement.

## **Analysis**

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 (2) of the Act provides:

(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

(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.

(3) 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 the case may be, from

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

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

*Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

*Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy* addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property.

### *Extenuating Circumstances*

With respect to extenuating circumstances, the Guideline #50 provides the following:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit.

The Guideline also provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. 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 didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that 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 renovations

#### *Compensation under section 51 of the Act*

Based on the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find as follows:

The landlord issued the Two Month Notice under section 49(3) of the Act. Once a notice to end tenancy is served by a landlord, a landlord cannot unilaterally rescind the notice.

I have considered the landlord's testimony that they verbally cancelled the Two Month Notice and the tenant accepted the cancellation during the chance meeting at the grocery store the day the Notice was served. I find the landlord's testimony, unsupported by any documentary evidence, to be an unlikely version of events and I give little weight to the landlord's recital of what took place.

In reaching this decision, I have considered that during the meeting the landlord gave the tenant a viewing schedule for upcoming prospective purchasers to visit the unit which she signed at their request. I have considered as well that the property, listed for sale in October 2018, continued to be offered for sale. I find it unlikely and implausible that the landlord cancelled the Two Month Notice with the consent of the tenant while making concerted efforts to sell the unit and obtain the tenant's consent to scheduled viewings.

I accept as credible the tenant's testimony and supporting documentary evidence that she believed the Two Month Notice was in effect, she found another place as soon as possible, and provided notice to the landlord of her intention to vacate on November 30,

2018.

In considering all the evidence and the testimony of both parties, I accept the tenant's testimony as credible that they believed that the Two Month Notice continued in effect. I find the tenant's testimony reliable that the tenant was shocked and upset at receiving the Two Month Notice, made concerted efforts to locate another unit that was suitable to her particular needs, provided the landlord with notice she was moving out before the effective date, and was genuinely puzzled when the landlord issued the second Notice when he found a purchaser for the unit on November 26, 2018. I find the tenant's actions were consistent with her reasonable belief that the Two Month Notice was in effect and was never cancelled.

I find the landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. As acknowledged by the landlord, I find the landlord did not move into the unit and the landlord sold the unit in March 2019 having entered into an agreement to sell the unit on November 26, 2018.

I have considered section 51(3) of the Act and the policy guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the landlord to support that there are extenuating circumstances present making it unjust for the landlord to have to pay compensation.

I find that there are no extenuating circumstances making it unjust for the landlord to pay compensation.

Pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I accordingly award the tenant a monetary order in the amount of \$22,800.00.

#### *Filing fee*

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

I grant the tenant a Monetary Order in the amount of \$22,900.00. This monetary order may be filed in Courts of the Province of British Columbia and enforced as an order.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

*Conclusion*

The tenant is granted a Monetary Order in the amount of \$22,900.00 and the cost of the filing fee.

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: January 13, 2021

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Residential Tenancy Branch