



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$30,100.00, for 12 months' compensation due to an allegation that the landlord failed to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 29, 2020 (2 Month Notice), and to recover the cost of the filing fee.

The tenant, an agent/articling student for the landlord, KB (agent), and an assistant to KB, VT (assistant) attended the teleconference hearing. All participants were affirmed. The hearing process was explained, and the parties were given an opportunity to ask questions during the hearing. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised issues regarding the service of documentary evidence or their ability to review such evidence, I find the parties were sufficiently served in accordance with the Act as a result.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent under the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2019. Monthly rent was \$2,500.00 per month and was never increased during the tenancy.

The tenant was served with the 2 Month Notice dated October 29, 2021. The effective vacancy date was not listed on the 2 Month Notice; however, should have read December 31, 2020. There is no dispute that the tenant vacated the rental unit by December 31, 2020. The reason stated on the 2 Month Notice is:

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 that individual's spouse).

Please indicate which close family member will occupy the unit.

- The child of the landlord or landlord's spouse.

The tenant did not dispute the 2 Month Notice and confirmed that they received the required one-month of compensation when a 2 Month Notice is issued by a landlord. The tenant is seeking compensation in the amount of 12 months' rent due to the landlord failing to comply with the reason stated on the 2 Month Notice.

Landlord's Evidence

The agent stated that the landlord's son, HY (also known as BY)(Son) moved into the rental unit in April 2021 and that the Son did not move in sooner due to what the tenant was already aware of, which was a pre-existing leak in the bathroom of the rental unit.

The agent submits regarding a reasonable period the following:

A "reasonable period" to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken. ... A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. ... A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

[Reproduced as written]

The agent also referred to an email dated February 25, 2020 that supports that the water leak in the rental unit was sourced in the shower of the rental unit and that the need to repairs prior to the son moving in was summarized in a document from a restoration company, BPR (the Restoration Company). In a Repair Schedule/Status Report from the Restoration Company (Report), it reads in part that their involvement with the shower leak started March 11, 2020 and the repairs did not commence until January 4, 2021 at the departure of the tenant. The Report included the following schedule of events:

### SCHEDULE OF EVENTS

March 11, 2020

-Requested to provide competitive estimate for the bathroom repairs by tenant, as per - Ashton Plumbing, Heating and Air Conditioning scope of work

April 2, 2020

-Completed estimate and requesting authorization to proceed

April 9, 2020

-Revision to estimate and requesting authorization to proceed

April 30, 2020

-Respond to questions regarding scope of work

June 10, 2020

-Revision to estimate and requesting authorization to proceed

June 22, 2020

-Received authorization to proceed, start order of tile

July 6, 2020

-Site unavailable due to tenant's health, project put on hold

December 19, 2020

-Advised work can proceed upon tenant's vacating site

-Scheduled start date January 4, anticipated completion date – February 12

January 27, 2021

-Identified water damaged framing to base of shower, requiring replacement. Additional estimate sent for approval. Receive authorization to proceed. Anticipated completion date moved to February 16, 2021

February 5, 2021

-Additional jack hammering of shower base completed to allow for shower membrane

February 17, 2021

-Advised owner that due to Covid-19, staffing of available quality trades to complete tile work had been delayed, postponing the tile work from February 23 to March 1, 2021

March 4, 2021

-Reported in floor drain to shower is faulty, requiring additional demolition and replacement, Work completed right away, in preparation for drain pan and tile work.

March 17, 2021

-Tile work proceeding

March 24, 2021

-Final clean and inspection. Report minor deficiencies to Property Manager, and general observations of the suite

March 26, 2021

-Property Manager advised on walk through, requesting tile touch up, completed March 29.

As noted in the Report on July 6, 2020, the site was unavailable due to the tenant's health and the repair was put on hold. The tenant did not dispute this during the hearing and referred several times to the schedule of events.

The agent also presented the BC driver's license of the Son which was issued on March 31, 2021 and shows the same address as the rental unit. In addition, the agent presented two receipts from the building management company for the condo, a move-

in fee of \$150.00 dated April 24, 2021 and an access fob fee of \$20.00 dated April 17, 2021 and both documents list the name of the Son.

Furthermore, the agent presented a BC Hydro invoice for the billing period of April 1, 2021 to April 29, 2021 in the name of the Son and the same address as the rental unit. Another BC Hydro invoice for the billing period of April 30, 2021 and May 31, 2021 was also presented and include the name of the Son and the same address as the rental unit. The agent also presented a daily breakdown of the hydro usage by day for the period of April 1, 2021 to June 17, 2021.

In addition, the agent presented the credit card statement from the Son, which lists their address as the same address as the rental unit and the statement is dated June 16, 2021 and shows local businesses on the credit card statement, according to the agent.

The agent then presented a copy of the Son's pay stub dated June 10, 2021 and names the company the Son is employed by and the name matching the Son's name and the address matching the rental unit address.

The agent presented a total of 5 colour photos which the agent stated supports the Son was living in the condo as it shows a kitchen with cooking supplies and cooking items, while another photo shows a computer setup, and a bedroom with a bed and hanging laundry and a bathroom with a towel and bathing products and grooming supplies and art on the wall.

The agent stated that the leak in the bathroom ended up being a bigger job to repair than originally expected as once the tiles and bathroom fixtures were removed, more damage was exposed, which delayed the repair project. The Report indicates that there is a single bathroom in the unit and that the repairs were required to be completed as it would not be suited for occupancy without being able to shower or bathe. The Report also indicates that the original estimate for repairs was 1 month but once the demolition occurred, that estimate was extended to 3 months.

The agent stated that given the unexpected delay in the required repairs, that the Son did move into the rental unit within a reasonable period. The agent stated that the Son continues to reside in the rental unit and is getting married so to live without paying rent in a very expensive city will give the Son a head start.

### *Tenant's Evidence*

The tenant claims the landlord did not have proper insurance for the repairs and that the repairs would have been completed much quicker if the landlord had proper insurance. The tenant referred to the Report on several occasions. For instance, the tenant stated that March 11, 2020 was the first time the Restoration Company was asked for competitive estimate and on June 22, 2020, the Restoration Company was given authorization to proceed with the repair.

The tenant also alleged that the Son obtained a new driver's license on March 31, 2021, which was after the tenant filed their application for 12 months' compensation on March 8, 2021. The tenant stated that they believe the tenant was living in Toronto and although the tenant referred to a conversation with AY, a landlord agent (AY), the tenant confirmed that AY was not a witness and that AY did not complete a written statement such as an Affidavit.

The tenant then referred to the daily hydro documents and stated that the hydro usage "jumps up" as of April 24<sup>th</sup>, 2021.

The tenant then wanted to raise the issue of "good faith" when the 2 Month Notice was issued and was not permitted to do so as the tenant was advised that they accepted the 2 Month Notice and if they felt the 2 Month Notice was not issued in good faith, they had the right to dispute the 2 Month Notice and did not do so.

The tenant then referred to an April 5, 2021 email from the building concierge which the tenant claims supports that there was no mail at the rental unit before April 5, 2021, which I will address later in this decision.

The tenant then mentioned the delays in the repair and that as of March 29, 2021 the actual work was completed and questioned why the Son did not move in before later in April 2021.

The tenant also claims that AY told him verbally that they can't force the landlord to comply with the reason stated in the 2 Month Notice. As noted above, the tenant did not present AY as a witness, nor did the tenant submit anything in writing from AY in support of the tenant's testimony.

#### Response from Agent

The agent stated the repair timeline was fluid due to unforeseen damage that was exposed once the tiles and fixtures were removed. In addition, due to COVID-19, which

is referenced in the Report, the agent stated that the Restoration Company advised of delays for tradespeople and that the Son moved in within a few weeks of the completed repair, which complies with the reason stated on the 2 Month Notice.

### Analysis

Based on the documentary evidence, the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 51(2) of the Act states:

(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 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.**

[Emphasis added]

Given the above, the only issue for me to determine is whether the landlord has complied with section 51(2) of the Act. I will first address the reasonable period timeline mentioned in section 51(2) of the Act. RTB Policy Guideline 50 – Compensation for Ending a Tenancy (PG 50), states under “Reasonable Period” the following:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. **For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.**

Accomplishing the Purpose/Using the Rental Unit 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. **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.

In the matter before me, I find the tenant did not dispute the Report entry which states in July 2020, the **site was unavailable due to the tenant's health and the repair was put on hold**. Given this, I find the tenant both knew about the needed repair and that it was delayed in part due to the tenant, and as a result, I find the delay in the repair is reasonable given the specific circumstances set out before me. I have reached this finding as I find the Report also supports that there were delays due to COVID-19 and unforeseen damage once the tiles and fixtures were removed as stated by the agent. I also find that PG50 does not state that 15 days is the time limit for a reasonable period and is just one example and does not apply to the scenario before me as I find the delays were reasonable given the lack of access in July 2020 due to the tenant's health and unforeseen damage that required more extensive repairs. I also have considered that the unit has one bathroom and that the repair prior to moving in was also reasonable.

I find the landlord did not substitute the purpose listed on the 2 Month Notice with another purpose as I find the landlord has met the burden of proof which is based on the balance of probabilities that the Son did occupy the rental unit by April 2021, and continues to occupy the rental unit, which is supported by the Son's driver's license, paystub, credit card invoice, photo evidence, receipts for a fob and move-in fee, and hydro documents. I also find the documents list the name of the Son and the rental unit address.

I afford little weight the tenant's claim of what AY told him as AY was not called as a witness, nor was an Affidavit submitted from AY to support those statements. I afford



significant weight to the Report, which I find supports the needs for repairs, that attempts to complete the repairs were made prior to the tenant vacating the rental unit, and in part were delayed due to the tenant.

I afford little weight to the tenant's speculation that the tenant came from Toronto to live in Vancouver and change their identification and obtain a job just to the landlord could avoid paying the tenant 12 months' compensation. I find that the tenant provided insufficient evidence to support their speculation.

In addition, I disagree with the tenant that the April 5, 2021 email from the building concierge supports that there was no other mail to the rental unit as I find the concierge was simply advising the tenant that they had mail to be picked up, and did not comment that no other mail had been received for others.

Furthermore, I find that when the tenant referred to the daily hydro documents and stated that the hydro usage "jumps up" as of April 24<sup>th</sup>, 2021, that this supports that the Son moved in on April 24<sup>th</sup>, 2021, which was confirmed by the agent during the hearing.

I find it is not necessary to consider the extenuating circumstances clause set out in section 51(3) of the Act as I find the landlord has met the burden of proof by providing sufficient evidence that the Son occupied the rental unit within a reasonable period due to the unforeseen delays for repair to the bathroom and that the Son continues to reside at the rental unit. Therefore, **I dismiss** the tenant's application in full without leave to reapply, due to insufficient evidence.

The filing is not granted as the tenant's application was dismissed.

### Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 30, 2021