



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE ADVANTAGE REALTY  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNETC

### Introduction

This hearing was convened in response to the Tenant's application for a monetary Order for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord and the Agent for the Landlord agree that the Landlord owns the rental unit and the residential complex, which is a five-plex. They agree that the Agent for the Landlord represented the Landlord during the latter portion of this tenancy and that he still manages the other 4 units in the five-plex. The evidence shows that the Agent for the Landlord works for the company named as the Respondent in this matter.

Rule 7.13 of the Residential Tenancy Branch Rules of Procedure permits me to unilaterally determine that another person should be added as a party. As the Application for Dispute Resolution names the company that the Agent for the Landlord works for and it does not name the owner of the rental unit, I find it appropriate to add the owner as a Respondent in this matter. As the Landlord/owner was present at the hearing, I do not find it necessary to adjourn this matter for the purposes of serving documents to the Landlord.

The Tenant stated that on December 18, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 13, 2022 was sent to the Agent for the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents, although he did not provide a copy of them to the Landlord/owner. The Landlord stated that the Agent for the Landlord told him

about the Application for Dispute Resolution, although he did not provide him with copies of the documents.

Section 89(1)(b) authorizes a tenant to serve an Application for Dispute Resolution to a landlord by leaving a copy with an agent for the landlord. On the basis of the undisputed evidence, I find that the aforementioned documents have been served to the Landlord pursuant to section 89(1)(b) of the *Act* and the evidence was accepted as evidence for these proceedings.

On June 22, 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was delivered to the Agent for the Landlord's business address, although she cannot recall the date of service. The Agent for the Landlord acknowledged receiving these documents in June of 2022, although he did not provide copies of the documents to the Landlord. I find that this evidence has been served to the Landlord in accordance with section 88(b) of the *Act* and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

#### Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began prior to the Landlord purchasing the rental unit in 2018;

- On February 02, 2021 a Two Month Notice to End Tenancy for Landlord's Use was posted on the door of the rental unit;
- The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by April 30, 2021;
- The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit would be occupied by the Landlord, the Landlord's spouse, and the father/mother of the Landlord or the Landlord's spouse;
- The Tenant disputed the Two Month Notice to End Tenancy for Landlord's Use;
- At a subsequent dispute resolution proceeding, the parties mutually agreed to end the tenancy on August 31, 2021;
- The rental unit was vacated on August 14, 2021; and
- At the end of the tenancy the monthly rent was \$904.80.

The Landlord stated that:

- When the Two Month Notice to End Tenancy for Landlord's Use was served on February 02, 2021, he intended to live in the rental unit while he was working in the community;
- He has a permanent residence elsewhere in the lower mainland;
- He expects that his wife and parents will sometimes stay in the rental unit with him;
- Numerous renovations were needed before he could move into the unit;
- In the first week of October he began looking for tradespeople for the renovation;
- There was a delay in looking for tradespeople because he was busy with other work items;
- Tradespeople began removing the carpet and similar items from the rental unit in November of 2021;
- Tradespeople began the renovations in January or February of 2022;
- The renovations were completed in the first week of June of 2022;
- He moved into the rental unit in the last week of June of 2022;
- He now sleeps in the rental unit on two or three occasions each week; and
- He did not submit any proof of moving into the rental unit because "nobody asked me".

The Agent for the Landlord stated that:

- Tradespeople began moving items from the rental unit in September or October of 2021;

- Tradespeople began installing items at the beginning of 2022;
- The renovations were delayed because flooding in the area made it difficult to obtain contractors and it was difficult for the contractors to access the unit;
- Renovations were completed in June of 2022;
- The rental unit was not suitable to occupy when the tenancy ended.

The Witness for the Tenant stated that:

- He lives in the vicinity of the unit and passes it on an almost daily basis;
- He has never seen any activity in the unit that would cause him to believe it is being occupied;
- He does not recall the last time he looked inside the unit; and
- He took photographs of the unit on October 08, 2021, November 02, 2021, November 16, 2021, November 29, 2021, and April 22, 2022, which were submitted in evidence.

### Analysis

On the basis of the undisputed evidence, I find that the monthly rent at the end of this tenancy was \$904.80.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, that declared the rental unit must be vacated by April 30, 2021. The Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because it will be occupied by the Landlord or the Landlord's spouse and the father/mother of the Landlord or the Landlord's spouse.

On the basis of the undisputed evidence, I find that the Tenant disputed the Two Month Notice to End Tenancy for Landlord's Use and, as such, was not required to vacate the unit by April 30, 2021.

On the basis of the undisputed evidence, I find that the parties subsequently entered into a mutual agreement to end the tenancy on August 31, 2021 and that the unit was vacated on August 14, 2021.

Section 51(2) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at

least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

In circumstances such as these, where the parties mutually agreed to end the tenancy on August 31, 2021, I find, for the purposes of section 51(2)(a) of the *Act*, that the Landlord was required to take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the agreed upon end date of the tenancy of August 31, 2021.

Residential Tenancy Branch Policy Guideline 2A, with which I concur, suggests that the onus is on the landlord to prove that they accomplished the 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.

I find that the Landlord has submitted insufficient evidence to establish that that the rental unit required renovations before the Landlord could move into it. Although the Agent for the Landlord testified that the unit was not suitable for occupation at the end of the tenancy and the Landlord testified that it required renovations before he could live in it, the Landlord did not submit any evidence, such as photographs, that corroborates this testimony.

Conversely, the photographs submitted in evidence by the Tenant refute the submission that the unit was uninhabitable. The photographs taken by the Witness for the Tenant on November 16, 2021 show that the portion of the unit that can be seen in the photographs is in a state of reasonable repair. While I accept that the Landlord wanted to renovate the rental unit before moving into it, I cannot accept that the Landlord was unable to move into the rental unit prior to renovating it.

On the basis of the testimony of the Landlord, I find that the Landlord did not even begin searching for tradespeople for the proposed renovation until at least five weeks after August 31, 2021; that “deconstruction” of the unit did not begin until 8-12 weeks after August 31, 2021; and that “reconstruction” did not begin until four to six months after August 31, 2021; and that renovations were not completed until renovations were not completed until more than 9 months after August 31, 2021. I find that the delay in embarking upon and completing the renovation was unreasonable.

I find the Landlord’s explanation that the initial delay in searching for tradespeople

because he was busy is not an acceptable reason for the delay. The Landlord submitted no evidence to suggest that his other work items were more important than his legal obligation to take reasonable steps to move into the unit.

As the Landlord provided no explanation of why the “deconstruction” of the unit did not begin until 8-12 weeks after August 31, 2021, I find that the Landlord has failed to establish that this was a reasonable delay.

While I accept that the flooding that is known to have occurred in the lower mainland in November of 2021 may have contributed to the delay in beginning and completing the construction phase of the renovation, I find that this delay likely would not have occurred if the Landlord had embarked on the renovations on September 01, 2021. The Landlord would have had approximately 2.5 months to complete the renovation if the Landlord had embarked on the renovations in a timely manner.

I note that the Landlord submitted no documentary evidence, such as a statement from a tradesperson or a renovation estimate that suggests the renovation delays were related to the flooding in November of 2021 or that the flooding prevented the Landlord from completing the renovation prior to June of 2022, which is nine months after August 31, 2021.

As I have found that the Landlord, the Landlord’s spouse, or a parent of those individuals did not taken reasonable steps to move into the rental unit within six months of August 31, 2021, I find that the Landlord must pay the Tenant \$10,857.60, which is the equivalent of twelve times the monthly rent.

Section 51(3)(a) of the *Act* authorizes me to excuse a landlord from paying the tenant the amount required under subsection (2) if, in my opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy.

As there is insufficient evidence to establish that extenuating business commitments and/or flooding in the region prevented the Landlord from completing the renovations and moving into the unit in a timely manner, I can find no reason to excuse the Landlord from paying the penalty established by section 51(2)(a) of the *Act*.

Conclusion

I find that the Tenant has established a monetary claim of \$10,857.60, as compensation pursuant to section 51(2)(a) of the *Act*.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$10,857.60. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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: July 21, 2022

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Residential Tenancy Branch