



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order of \$23,500 for compensation the equivalent of 12 months of rent based on the landlord not complying with the reason stated on a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 30, 2021 (2 Month Notice) and to recover the cost of the filing fee.

Attending the teleconference hearing were the tenants and the landlord. All parties were affirmed. All 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. Both parties confirmed that they were served with documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing.

I have reviewed all documentary and/or digital evidence and testimony 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.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants 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 fixed-term tenancy began on August 1, 2021 and was scheduled to convert to a month-to-month tenancy after December 31, 2021. The tenants confirmed that they were served with the 2 Month Notice dated October 30, 2021 and that the 2 Month Notice had an effective vacancy date of January 15, 2022. The tenants confirmed that they did not dispute the 2 Month Notice and vacated on January 1, 2022 as a result of the 2 Month Notice.

The reason stated on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord 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.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The landlord admitted during the hearing that their intention of the rental unit was for their mother and father. The father and mother of the landlord or landlord's spouse was not selected as the reason why the landlord issued the 2 Month Notice as indicated above. The reason is listed as "The landlord or the landlord's spouse."

The parties were advised that due to the landlord admitting that the rental unit was not used for the stated purpose, that my only consideration left to determine, is whether or not the landlord presents sufficient evidence to support that the landlord had extenuating circumstances that prevented the landlord from complying with the reason stated on the 2 Month Notice.

The landlord testified that his mother had dementia and that it was first diagnosed in 2016. The landlord stated that his mother passed away on July 15, 2022. As the reason listed on the 2 Month Notice did not include the father or mother of the landlord, I will address this issue in my analysis below.

The landlord also testified that in January 2022 there was a “water burst” and that the insurance did not cover the water damage so the landlord made the decision to “demolish the rental unit due to the water damage.” There was no photo evidence submitted of water damage to the rental unit.

The tenants’ response was that the landlord did not list their parents on the 2 Month Notice and that the landlord’s mother passed away 7 months after the effective vacancy date listed on the 2 Month Notice, which was January 15, 2022.

The tenants referred to their photo evidence which shows machines outside the rental unit on February 15, 2022 and that as of March 1, 2022, all windows were removed and the home was already being demolished. There is no evidence before me of any permits to demolish the rental unit and build a new home. There is no dispute that as of April 9, 2022 the rental unit property was no longer standing and had been demolished. A photo from July 2022 shows a new home being built on the rental property.

The landlord testified that this is the first time they have been in a dispute resolution hearing and that they have been a landlord for 6 to 7 years. The landlord confirmed that a new home was built; however, the landlord testified that they intended the new home for their mother who was aged 76.

The landlord testified that they were suffering from a lack of income and that they could not rent the rental unit out as it was unliveable due to the water leak that happened in January 2022.

Analysis

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

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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

- (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.**

[emphasis added]

In addition to the above, section 51(3) of the Act states:

(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 applicable, from**

- (a) **accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and**
- (b) **using the rental unit,** except in respect of the purpose specified in section 49 (6) (a), **for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[emphasis added]

Firstly, and as confirmed by the landlord during the hearing, the landlord confirmed they did not move into or occupy the rental unit after serving the 2 Month Notice and that due to the declining health of their mother and a water leak in January 2022, that they made the decision to demolish the rental unit instead and build a new home. The reason stated on the 2 Month Notice stated that the landlord or the landlord's spouse would occupy the rental unit. As the landlord admitted that the rental property was for their mother and that the landlord did not intend to move into the rental unit, I find the landlord has provided insufficient evidence that they used the rental unit within a reasonable period after the effective date of the 2 Month Notice.

Based on the above, I find the remaining issue before me, is whether the landlord has provided sufficient evidence to support that extenuating circumstances exist that stopped the landlord from using the rental unit within a reasonable period and for at least 6 months from effective date.

RTB Policy Guideline 50 – *Compensation for Ending a Tenancy* (Guideline 50) applies and states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. 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 one month after 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.

The following are probably not extenuating circumstances:

- **A landlord ends a tenancy to occupy the rental unit and then changes 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.

[emphasis added]

I find Guideline 50 takes a reasonable approach and based on the evidence before me, I find as follows. Firstly, as the landlord failed to provide any permits for my consideration, I find that it is more likely than not that for the landlord to demolish the rental unit starting in February 2022, that between January 15, 2022 and February 2022 is not enough time to have a building permit submitted and approved. Therefore, I find that it is more likely than not that a water leak was not the reason for demolishing the rental unit as I find the landlord more likely than not had applied for a building permit

and authorization to demolish the property **before** the tenant vacated the rental unit in January 2022.

As such, I find the landlord has failed to provide sufficient evidence that extenuating circumstances prevented them from complying with the reason stated on the 2 Month Notice. As a result, I find the landlord breached section 51(2)(a) and section 51(2)(b) of the Act. Section 51(2) of the Act states:

Tenant's compensation: section 49 notice

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 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]

As section 51(2) places the onus of proof on the landlord and considering my finding that the landlord breached sections 51(2)(a) and 51(2)(b) of the Act, **I find the tenants' application is fully successful.**

As a result of the above, I find the tenant is entitled to \$23,400 in compensation from the landlord, comprised of 12 times the monthly rent of \$1,950 pursuant to section 51(2) of the Act. In addition, as the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of \$100 pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$23,500** comprised of \$23,400 for 12 times the \$1,950 monthly rent, plus the \$100 filing fee.

Conclusion

The tenants' application is fully successful.

The landlord has not met the burden of proof and has breached the Act as described above.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$23,500 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The following website has further information about serving a monetary order, a demand letter and enforcement of a monetary order:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing/serving-and-enforcing-orders>

This Decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

Should the landlord fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

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: November 16, 2022

Residential Tenancy Branch