



# 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 tenant's application for additional compensation payable where the purchaser(s) of the rental unit do not use the property for the reason stated on the Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") as provided under section 51(2) of the Act.

In this case, the respondents are the purchasers of the rental unit and the tenancy ended before the purchasers became the owners. However, under section 51(2) a tenant may pursue the purchaser of a rental unit, which the tenants have done in this case. In this decision, the purchasers may be referred to as the purchasers, the owners, the respondents or the landlords.

The tenants and a representative for the respondents appeared for the hearing. The parties were affirmed. The representative stated the respondents speak little English and they asked her to represent them; however, the representative is able to call the landlords and translate if needed.

I confirmed the tenants sent their proceeding package and evidence to the respondents via registered mail and the registered mail packages were received. Four of the five registered mail packages were sent to the rental unit address and one package was sent to a different address. The respondents' representative confirmed that although the tenants sent one of the packages to a different address, the respondent received it as the address used by the tenants was the respondent's daughter's home.

The respondents' evidence was given to one of the tenant's mother, in person, on December 22, 2022 and the tenant received it from her mother later that day. The other tenant was served in person on December 23, 2022. I asked the landlord's representative to explain why the landlord's evidence was served late. The

representative explained that one of the landlords was out of the country for a number of months and the landlords are seniors who required assistance to retrieve electronic evidence. I was satisfied there was not an intentional unreasonable delay but in consideration the tenants were afforded less time to review the landlord's evidence than required under the Rules of Procedure, I explored with the tenants whether they had reviewed and prepared a response to the evidence or whether they needed more time. The tenants confirmed they had an opportunity to review the landlord's evidence and were prepared to respond to it and they did not need more time.

In light of the above, I admitted all of the materials of both parties and considered it in making this decision.

#### Issue(s) to be Decided

Did the purchasers use the rental unit for the purpose stated on the 2 Month Notice and are the tenants entitled to additional compensation payable under section 51(2) of the Act?

#### Background and Evidence

The tenants and the former landlord entered into a tenancy agreement on November 1, 2016. Rent was initially set at \$1605.00 and was increased to \$1636.00, payable on the first day of every month, by the end of the tenancy.

The tenants were served with a 2 Month Notice on September 24, 2021 with a stated effective date of November 30, 2021.

The reason for ending the tenancy, as stated on the 2 Month Notice, was that:



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.

Attached to the 2 Month Notice was a copy of the purchaser's written request for the landlord to serve the tenants with the 2 Month Notice so that they, or a close family member, may occupy the rental unit. The written request was executed by the five landlords' named in this decision.

The tenants vacated the rental unit on November 15, 2021.

After the tenancy ended, the tenants drove by the rental unit on a number of occasions and noticed contractor vehicles at the property, the carport was closed in and then in April 2022 the tenants saw the rental unit listed for sale for approximately \$500,000 more than it had been purchased for just months prior. The tenants proceeded to make this Application for Dispute Resolution.

The landlord's representative submitted that the purchasers gained title and possession of the rental unit on December 1, 2022. The five landlords hold equal ownership of the property. All of the owners are related in some way, being: husband and wife, brother and sister, and cousins.

After acquiring ownership, the landlords commenced some renovations, including conversion of the carport to a bedroom, the addition of a kitchenette and an additional bathroom that essentially created a small suite on the lower level.

The landlords' representative submitted that the small suite is occupied by the owner with initials PD and the other owners occupy the main part of the house. The owners moved into the property mid-December 2021. The tenants testified that in driving by the rental unit it appeared that construction was taking place into January 2022 and it appeared to them that there was nobody living in the rental unit for the first six weeks.

The landlords acknowledge the property was listed for sale on March 8, 2022; however, it was not sold and the listing was withdrawn on March 23, 2022. The landlords' representative submitted that the property was listed for sale due to financial reasons but then the owners changed their minds, also for financial reasons. The tenants submitted that the landlords' reasons for listing the house for sale and then changing their minds, both for financial reasons, do not make sense and that the owners' actions demonstrate the landlords ended the tenancy, in bad faith, intending to flip the property for a large profit. The tenants also pointed out that when the house was listed for sale during their tenancy, the owners did not even view the house; rather, it was the son of PD who is a realtor and this is inconsistent with wanting to purchase a house to use as one's home.

The tenants further submitted that they saw the house listed for sale again in the summertime, approximately August 2022; however, it did not sell then either. The tenants did not submit documentary evidence of that since more than six months had passed since the tenancy ended and the landlords would be at liberty to sell the house without consequence by then. The landlord's representative was unaware of the house

being listed for sale a second time, in the summer time, and could not respond to this submission.

The landlords provided various photographs that show the owners in the rental unit including: a couple sitting on the couch, a woman sitting on a couch, a woman preparing food in the kitchen, a couple standing on the back deck, and an owner with her son standing in front of the house. The landlords submit these photographs show the landlords have been occupying the rental unit. The tenants responded that the rental unit looks very sparse in their photographs as there is very little furniture, no television, no decorations, no personal possessions, and there are no photographs of bedrooms or bathrooms. The landlord's representative stated the owners are minimalists and do not have many possessions, being new comers to this country.

The tenants pointed to images that appear in the sales listing that show the rental unit vacant. The landlord's representative responded that some of the photographs were taken shortly after purchasing the house and making renovations to send to family back in their country of origin and in the event circumstances change. The tenants responded that the interior of the rental unit, other than the creation of the small suite downstairs, looks unchanged from when they resided in the unit.

The landlords provided hydro and gas bills in an attempt to demonstrate the rental unit is occupied by the owners. The hydro bill is in one of the owner's name. The gas bill is in the name of PD's son. I heard the reason for putting the gas bill in the son's name is because the owners would have to pay a deposit to get a gas account in their name. The owners then pool their funds and share in payment for the utility bills and grocery bills.

The landlords submitted various other documents in an effort to demonstrate they reside at the rental unit including: a notice of assessment for a tax return, a GST statement, an ICBC rebate letter, and a change of address sticker on a driver's license.

The landlord's representative testified that she personally went in the rental unit and met with a few of the owners on three occasions: in May 2022, in August 2022 and twice in November 2022. While there she was invited in for tea and translated documents for the landlords. The landlord's representative did see a TV, table, couches, clothing, bedding and stated that in her view, the rental unit looked lived in.

Finally, the landlords' representative pointed out that the owners did receive the registered mail at the rental unit, further evidence the owners reside at the rental unit.

The tenants disagreed, stating the owners could still pick up mail at the rental unit even if they do not reside there.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

It is undisputed that the tenancy ended because the tenants were served with a 2 Month Notice and the reason the tenancy was ended was because the purchasers of the property asked the former landlord to end the tenancy so that the purchasers, or their close family member(s), may occupy the rental unit.

Where a tenant receives a 2 Month Notice” under section 49 of the Act, as did the tenants in this case, the compensation provisions of section 51 apply.

This application is being made under section 51(2) of the Act, which provides for additional compensation payable to the tenant, equivalent to 12 months of rent, in certain circumstances.

Below, I have reproduced section 51(2) of the Act:

(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.

[My emphasis underlined]

Subsection 51(3) provides a mechanism to excuse a landlord from having to pay the compensation provided under section 51(2) due to “extenuating circumstances”. I did not hear any arguments that an exception was applicable as the purchasers take the

position they have been occupying the rental unit for at least six months starting within a reasonable amount of time after the tenancy ended.

Where a tenant makes an application under section 51(2) of the Act, the landlord bears the burden of proof. The burden of proof is based on the balance of probabilities. As such, I proceed to analyze the evidence before me with a view to determining whether the landlords have met that burden on proof.

Upon consideration of the evidence, I am satisfied the purchasers have been occupying the rental unit. In making this finding, I have relied upon photographs showing the owners sitting in the living room and using the kitchen, mail addressed to the owners at the rental unit, a change in driver's license address to the rental unit, and the BC Hydro bills. I also heard and accepted affirmed testimony from the landlords' representative that she went to the rental unit to meet with the owners and had tea and saw what looked to be a lived in house in the months of May 2022, August 2022 and November 2022.

In contrast, I find there is no evidence to suggest that anybody else is living in the rental unit, with the exception of the gas bill which is in the name of the son of one of the owners. The son also appears in the one of the photographs alongside his mother. However, even if the owner's son is residing in the rental unit, a child is a "close family member" as defined in section 49 of the Act, and occupancy by the son would meet the criteria for ending the tenancy for landlords' use of property.

While the tenants argue the landlord's photographs show a very sparse living space, when I look closely at the photographs, I do see indication of things that I would expect to see where a person is residing in a house versus furniture merely used for staging. For instance, I see a microwave sitting on the kitchen counter, a cutting board and knife, a broom handle with some stacked boxes in the kitchen. Also, the living room does have a side table with items on it, there is a wall hanging behind the couch and a window covering, and the woman sitting on the couch is covered with a blanket. Also of consideration is the affirmed testimony of the landlord's representative who testified that she was in the rental unit, along with a few of the owners, on a number of occasions in the months of May 2022, August 2022 and November 2022 and during those visits she had tea with the owners and the rental unit appeared to be lived in. Although sparse, I find there is sufficient indication to me that the rental unit is being lived in by the owners or their close family member(s) and the unit was not left vacant.

The tenant's photographs, which were from the sales listing, show a vacant house. However, I accept that the explanation that the photographs were taken shortly after the owners gained possession of the rental unit to be reasonable. In other words, I do not think it is unusual for new owners to take pictures of the house that they have just purchased, before furniture and other personal possessions are moved in.

Having been satisfied the owners have been residing in the rental unit, the issue becomes, when did the owners start occupying the rental unit as the owners are required to start occupying the unit within a "reasonable period after the effective date of the notice".

The 2 Month Notice had an effective date of November 30, 2021. The landlords put forth that they began occupying the rental unit in mid-December 2021; whereas, the tenants submitted that it appeared to be vacant and under renovation for approximately six weeks. I turn to the utility bills with a view to determining the most likely time frame the rental unit was occupied by the owners as the utility bills show consumption of utilities which I would expect would fluctuate with occupation. The BC Hydro bills are generated every two months and there are consumption graphs visible on the bills showing use in December 2021, February 2022, April 2022, June 2022 and August 2022. I note that the electricity consumption in December 2021 was very low but it increased significantly the next reporting period of February 2022. The gas bills are generated approximately every month and I see that consumption in January 2022 was greater than that in December 2022. Based on the utility bills, I accept the tenant's submission is more likely and I find the owners likely moved into the rental unit in January 2022.

Having heard the rental unit had another bathroom and kitchenette added, along with the enclosure of the carport, I accept that delaying the move-in by approximately six weeks until January 2022 is within reasonable so as to accommodate the construction, including plumbing alterations.

As for the tenants' argument that the owner's creation of additional living space followed shortly thereafter by a sales listing points to an bad faith intention to flip the property rather than use the rental unit as their residence I find as follows. A bad faith argument is not relevant after the tenancy has ended. A bad faith argument is relevant where a tenant files to dispute a 2 Month Notice and seeks to have the notice cancelled. What is relevant where a tenancy has ended pursuant to a 2 Month Notice is that the landlord actually used the rental unit for the purpose stated on the 2 Month Notice and to use it within a reasonable amount of time and for a least six months thereafter. To illustrate:

where a landlord ends a tenant with an intention to use a rental unit for his/her own residence but then does not actually use it for that purpose, the landlord would be liable for the additional compensation; thus, a landlord who actually does use the unit for their own residence, as stated on the 2 Month Notice, would not be liable. In this case, there is unopposed evidence the house was listed for sale for brief period of time within six months of the owners moving into the rental unit; however, the house did not actually sell and the owners continued to occupy the house. Therefore, I find the act of listing of the house does not in itself create an entitlement to the additional compensation for the tenants.

In light of all of the above, I find I am satisfied that the owners moved into the rental unit within a reasonable period of time after the tenancy ended and the owners continued to occupy the rental unit for at least six months thereafter. Therefore, I find the tenants are not entitled to the additional compensation payable under section 51(2) of the Act and I dismiss the tenant's application.

### Conclusion

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

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 19, 2023

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Residential Tenancy Branch