



# 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 an Application for Dispute Resolution (the Application) that was filed by the former Tenant on May 24, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- 12 times their monthly rent pursuant to section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on February 7, 2023, and was attended by the Tenant and the Purchaser. All testimony provided was affirmed. As the Purchaser acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and raised no concerns with regards to service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence and neither party made arguments that any of the evidence before me should be excluded from consideration, I have accepted it for consideration. The participants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The participants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to the Rules of Procedure, recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

#### Issue(s) to be Decided

Is the Tenant entitled to compensation under section 51(2) of the Act?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The parties agreed that the tenancy ended January 1, 2022, as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) as it was sold to the Respondent, who requested it be served by the previous owner as they or their close family member intended to occupy the property. The parties agreed that although the Tenant had disputed the Two Month Notice, it was upheld at arbitration, and that rent at the time the tenancy ended was \$1,000.00 per month. The related Two Month Notice had an effective date of January 1, 2022, and states that the notice has been issued because the rental unit will be occupied by the Landlord or the Landlord's spouse and because 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Purchaser stated that the property is a single-family home and that when they purchased it, the Tenant resided in a basement suite. The Purchaser stated that they moved into the main portion of the home on November 17, 2021, and after the Tenant vacated, they applied for a permit to remove an interior wall as at that time, the only access to the basement suite was through an exterior door. A copy of the permit was submitted. The Purchaser stated that the rental unit has been converted to a portion of the main home through the removal of the kitchen and the addition of interior access, and includes a bedroom and cinema room for their personal use and the use of their family and guests.

The Tenant disputed the Purchaser's testimony and argued that the Purchaser's witness statements are inconsistent with regards to what the former suite is being used for. The Tenant stated that it was their belief from the previous hearing regarding their Application for Dispute Resolution seeking cancellation of the Two Month Notice that the Purchaser's mother was to occupy the rental unit, which they argued did not happen until May. As a result, the Tenant argued that the Two Month Notice was not served in good faith. The Tenant also accused the Purchaser's realtor of attempting to extort them prior to the end of the tenancy.

Both parties provided witness statements in support of their positions, however, proof that the Tenant's witnesses wished to retract their statements was also submitted.

### Analysis

Section 51(2) of the Act states that if a tenancy has ended due to service of a Two Month Notice, and the landlord or purchaser does not establish that the rental unit was used for the stated purpose set out in the Two Month Notice within a reasonable period of time after the effective date of a Notice, and for at least six months duration thereafter, the tenant will be entitled to 12 times the monthly rent payable under the tenancy agreement.

For the following reasons, I find that the Landlord has satisfied me on a balance of probabilities that the rental unit was both used for stated purpose within a reasonable period after the effective date of the Two Month Notice, and for at least six months duration thereafter. Numerous witness statements were submitted by the Purchaser in which the witnesses stated that they have personally visited the residence and can confirm that the former basement suite has been converted into living space for the home. Although the Tenant submitted two witness statements, retractions of these statements by the witnesses were also submitted. As a result, I have not afforded the Tenant's witness statements any weight. While the Tenant argued that the Landlord's witness statements were inconsistent with one another, I disagree. I find that they are consistent both with each other and the testimony of the Purchaser at the hearing. Further to this, the Purchaser also submitted photographs of the converted space and a copy of the building permit.

Although the Tenant argued a lack of good faith on the part of the Purchaser, section 51(2) of the Act contains no good faith requirement, unlike section 49 of the Act, which is not at issue in this Application as the tenancy has already ended and the matter of

validity of the Two Month Notice was previously decided by the Residential Tenancy Branch. As a result of the above, I dismiss the Tenant's claim for compensation under section 51(2) of the Act without leave to reapply. As the Tenant was unsuccessful in their Application, I also decline to grant them recovery of the \$100.00 filing fee.

### Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d).

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: March 17, 2023

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Residential Tenancy Branch