



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNETC FFT**

### Introduction

This hearing was reconvened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant applied for:

- compensation from the Purchaser related to a Notice to End Tenancy for Landlord's Use of Property dated September 5, 2021 (the "2 Month Notice") pursuant to sections 51(2); and
- authorization to recover the filing fee for the Application from the Purchaser pursuant to section 72.

The original hearing of the Application was held on January 10, 2023 ("Original Hearing"). The Purchaser, the Purchaser's legal counsel ("BAS") and the Tenant attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and issued an interim decision ("Interim Decision") dated January 13, 2023. The Interim Decision stated the Tenant and Purchaser were not to serve each other, or submit to the Residential Tenancy Branch ("RTB"), with any further evidence. The RTB served the Notice of Adjourned Hearing and Interim Decision on the parties. The adjourned hearing ("Adjourned Hearing") was scheduled for March 3, 2023. The Purchaser, BAS and the Tenant attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, the Tenant stated the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) was served on the Purchaser by registered mail on May 14, 2022. The Tenant submitted into evidence a copy of the Canada Post tracking number to corroborate his evidence of service of the NDRP Package on the Purchaser. I find the NDRP Package was served on the Purchaser in accordance with the provisions of sections 88 and 89 of the Act.

#### Preliminary Matter – Late Service of Purchaser’s Evidence on the Tenant

BAS admitted the Purchaser did not serve the Tenant, and submit to the RTB, with his evidence at least 7 days before this hearing. BAS stated the Purchaser did not understand the dispute resolution process. BAS stated that it was not until about one month before the hearing that he consulted with BAS regarding the Application. BAS stated the Purchaser and his family were very ill recently and did not have the opportunity to focus on the Application. BAS stated the monetary claim of more than \$38,000 made by the Tenant was very large. BAS submitted that natural justice dictated there be an adjournment so that the Purchaser’s evidence may be admitted.

The Tenant objected to the request of BAS for an adjournment because the Purchaser had ample time to prepare for the hearing of the Application. The Tenant stated he received a phone call from his step-daughter to advise him that a package for this hearing had been delivered to his home about an 1 ½ hours before the commencement of the Original Hearing. The Tenant stated he would be prejudiced if the Purchaser’s evidence was admitted because he has not reviewed it. The records of the RTB indicate the Purchaser submitted his evidence to the RTB on January 10, 2023.

Rule 3.15 of the RoP states:

#### **3.15 Respondent’s evidence provided in single package**

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent’s evidence must be

received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

See also Rules 3.7 and 3.10.

The Purchaser did not serve the Tenant, and submit to the RTB, with his evidence at least 7 days before this hearing. As such, the Purchaser did not comply with Rule 3.15 of the RoP. The Tenant stated he would be prejudiced if I admitted the Landlord's evidence because he had not seen it and has not had the opportunity of preparing a response to it. The Purchaser had more than 7 months to retain legal counsel and prepare for the hearing. Based on the foregoing, I declined to admit the Purchaser's evidence for the Original Hearing.

BAS objected to my ruling on the basis that it would be unfair and would not be in accordance with procedural fairness. I advised BAS that the Purchaser could provide oral testimony on the contents of the evidence or call witnesses to provide oral testimony on the contents of the evidence. However, I admitted the Purchaser's evidence for the Adjourned Hearing as the Landlord's evidence was served at least 7 days before the date of the Adjourned Hearing.

#### Preliminary Matter – Disruptive Behavior of Purchaser During Hearing

Rule 6.10 of the RoP stipulates that it is not permissible to disrupt the hearing and it authorizes me to give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. It further authorizes me to exclude a party from the hearing if they do not comply with my directions regarding their behavior.

During the Original Hearing, the Purchaser kept interrupting me and the Tenant while we were speaking. I gave the Purchaser several warnings to discontinue the interruptions. At one point during the Original Hearing, I asked the parties to remain quiet while I reviewed images the Tenant submitted into evidence respecting advertisements placed on Facebook Marketplace. Notwithstanding my instructions to the parties, the Purchaser started speaking loudly and he would not stop when

requested. At this point I placed the Purchaser on mute mode so that I could continue to review the evidence submitted by the Tenant. I did not mute the call of BAS. I told the Purchaser that I would unmute his line when it was time for him to provide testimony or to answer any questions that I may have.

### Issues to be Decided

Is the Tenant entitled to:

- compensation from the Purchaser in relation to the 2 Month Notice?
- recover the filing fee for the Application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

### ***Testimony Given by Parties at Original Hearing***

The Tenant submitted into evidence a copy of a signed tenancy agreement ("Tenancy Agreement"), dated July 1, 2019, between the Tenant and his former landlord ("Former Landlord"). The Tenancy Agreement stated the tenancy of the rental unit ("Rental Unit") commenced on July 1, 2019, on a month-to-month basis, with rent of \$3,200.00 payable on the 1<sup>st</sup> day of each month. The Tenancy Agreement required the Tenant to pay a security deposit of \$1,600.00. BAS admitted the Purchaser received a copy of the Tenancy Agreement from the Former Landlord prior to closing of a purchase and sale agreement ("Sale Agreement") between the Purchaser and the Former Landlord. The Purchaser refused to admit that the Tenancy Agreement submitted into evidence by the Tenant provided the correct terms of the tenancy.

The Tenant submitted into evidence a copy of a Two Month Notice dated September 5, 2021 ("2 Month Notice") that he stated he received sometime in September 2021. The 2 Month Notice stated the Tenant was to vacate the Rental Unit on November 29, 2021. The 2 Month Notice stated the reason for the 2 Month Notice was:

All 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.

The 2 Month Notice did not provide the name or address of the purchaser as required on page 2 of the 2 Month Notice. However, the 2 Month Notice indicated a copy of the purchaser's written request for the seller to issue an eviction notice was attached. The Tenant submitted into evidence a copy of the written notice ("Purchaser's Notice") that accompanied the 2 Month Notice. The Purchaser's Notice stated:

August 26, 2021

# I [Name of Purchaser] being the purchaser of [address of rental unit], will need the current owner (Seller) to advise existing tenants that I will be requiring the whole house for storage and living provide them with a two month notice to end the Tenancy from dated August 26, 2021 to provide tenants time to secure a new rental unit.

Buyer need Vacant Possession of whole house on November 30, 2021.

Regards,

[Name of Purchaser]  
[Electronic Signature]

The Tenant stated he accepted the 2 Month Notice and, although he moved out on October 29, 2021, he retained possession of the rental Unit until November 29, 2021 so that he could clean it. The Tenant stated the Rental Unit was situated in an old house attached to which was a new extension ("Extension") was added. The Tenant stated he occupied the upper portion of the Rental Unit and he sublet the lower portion of the Rental Unit to a friend. The Tenant stated the subtenant also vacated the lower portion of the Rental Unit at the same time as the Tenant. The Tenant stated the Former Landlord occupied the Extension. The Purchaser did not dispute this testimony.

The Purchaser stated he obtained possession of the Rental Unit at the end of November after completion of the Sale Agreement. The Purchaser stated he did not move any furniture into the Rental Unit immediately because it required renovations. The Purchaser stated the Tenant had caused "extreme" damage to the Rental Unit and it was not fit to move into. When I asked the Purchaser if he did a walkthrough of the Rental Unit prior to purchasing it, he stated he made one walkthrough and everything was good. The Purchaser stated he had pictures of the Rental Unit and there was damage to the heating system but the Purchaser did not provide details on any other damages. The Purchaser stated repairs were needed to be performed on the heating

system before anyone could move into the Rental Unit. The Purchaser stated the renovations to the heating system and other things were made on and off until May or June 2022. Other than for the heating system, the purchaser did not provide any particulars of the extreme damages he alleged were caused to the Rental Unit by the Tenant nor did the Purchaser provide any pictures of the damages he claimed were caused by the Tenant nor did he submit any invoices or other evidence documenting the costs for the repairs or why it took so long to perform those repairs.

The Purchaser stated there were 13 people living in the house he owns on a property ("Adjoining Property") which immediately adjoins the residential property on which the Rental Unit is located. The Purchaser stated five of the people living in his house are children. The Purchaser stated the reason for purchasing the Rental Unit was for expansion of his family. The Purchaser stated his brother ("SPS") was going to have a baby in a few months. When I asked where the Purchaser's testimony was leading, BAS stated the Purchaser was relying on extenuating circumstances for why the Purchaser did not move in and occupy the Rental Unit within a reasonable period of time after the effective date of the 2 Month Notice and use the Rental Unit for a minimum period of six months thereafter. The Purchaser stated the SPS and his wife ("MPS") intended to move into the Rental unit. The Purchaser stated the parents and a grandfather of the SPS's wife were also coming from India to live with them in the Rental Unit.

The Purchaser stated SPS was named as an owner on the Certificate of Title for the residential premises at closing of the Sale Agreement. When I asked, the Purchaser admitted SPS was not named in the Sale agreement nor was he named in the Purchaser's Notice. The Purchaser stated the Sale Agreement provided that other parties could be added to the Sale Agreement. The Purchaser stated that SPS and his family are currently living in the Rental Unit. The Purchaser stated the names of SPS and another member of his family were added to the Sale Agreement as purchasers after August 26, 2021. The Purchaser stated SPS had every right to move into the Rental Unit and that he did not move into the Rental Unit. The Purchaser stated that adding names to a contract for the purchase of real estate after the signing of the purchase and sale agreement happens every day in real estate transactions.

BAS argued that SPS, as one of the registered owners named on title for the Rental Unit, was entitled to move in and occupy the Rental Unit.. BAS stated the registered owners on the state of title certificate for the Rental Unit are the Purchaser, SPS and another brother ("GPS"). BAS stated that the registered owners of the Rental Unit expected the two parents and a grandfather of SPS's wife to arrive from India in

January 2022. BAS stated that the grandfather became very ill in early January 2022 and he passed away on January 22, 2022.

BAS stated that, as a result of the death of the grandfather, the plans the family had for the use of all of the residential property changed. BAS stated the registered owners were acting in good faith when the 2 Month Notice was served on the Tenant. The Purchaser stated that, although his name was the only name that appeared on the offer to purchase the Rental Unit, nothing was written in stone as to who the purchasers of the Rental Unit would be. The Purchaser stated SPS is still using the larger portion of the residential property for his own use and the smaller portion of the Rental Unit was rented out.

The Tenant stated he believes the Purchaser rented the Rental Unit sometime in January 2022. The Tenant stated he found online advertisements placed on Facebook Marketplace in January 2021. The Tenant stated one posting advertised the upper portion of the Rental Unit, consisting of three bedrooms, for rent at \$2,650.00 per month. The Tenant stated the second posting advertised the lower portion of the Rental Unit, consisting of a one bedroom basement suite, for rent at \$1,250.00 per month. The Tenant submitted into evidence copies of the posting for each of the two portions of the Rental Unit together with 24 photos of the two portions of the Rental Unit that accompanied the advertisements. None of the 24 photos showed furniture or appliances in any of the rooms in the two portions of the Rental Unit that were advertised. The Tenant stated that, in the earlier two postings, the two parts of the Rental Unit were stated to be in stock. The Tenant stated that, in the two postings that appeared about one week later, it stated the two portions of the Rental Unit were rented. The Purchaser stated they rented the Rental Unit in June 2022.

BAS stated that, at the time the advertisement appeared on Facebook Marketplace in January 2022, the Rental Unit could not be insured because it was vacant. BAS stated the family considered renting the property and placed the advertisements. BAS stated that, after a week or so, the family reconsidered and stopped the advertisements. BAS stated this was the reason the advertisements showed two portions of the Rental Unit were rented. BAS stated it was SPS who placed the advertisements on Facebook Marketplace and that the advertisements were not binding on the Purchaser. BAS argued that that, if I was to find that the Purchaser was bound by the 2 Month Notice, then the Purchaser had the option of using the Rental Unit or leaving it vacant for six months.

BAS stated the Purchaser is living with his family in the house on the Adjoining Property and that family sometimes use the Rental Unit and have some of their things stored

there. BAS stated the parents of the Purchaser's wife and BPS's wife sometimes use the Rental Unit. BAS stated the Purchaser purchased the property so they could have more space. BAS repeated his earlier testimony that circumstances changed when the grandfather died and this necessitated a change in the plans that had been made by the family. BAS stated that when the parents of BPS's wife did not come from India due to the death of grandfather, the insurance agent advised that the Purchaser could not keep the Rental Unit vacant. BAS stated that, in these circumstances, the Purchaser "gave out" just one room in the Rental Unit, which continues to be occupied.

***Testimony Given by Parties at Adjourned Hearing***

At the commencement of the Adjourned Hearing, I reminded the parties that the Purchaser's evidence was now admitted. I also noted that I reviewed the copy of the State of Title Certificate for the residential property and confirmed that the registered owners of the residential property are the Purchaser, GPS and SPS.

The Tenant stated that, although the Former Landlord did not perform a move-out inspection of the Rental Unit with him, he Former Landlord returned the Tenant's security deposit. The Purchaser did not dispute this testimony. The Tenant stated that, based on the 2 Month Notice and the Purchaser's letter he was given, he believed the Purchaser was the only purchaser of the Rental Unit.

The Purchaser stated that, in order to maintain insurance, the Rental Unit could not remain empty. The Tenant stated that, as the relatives in India were not coming, he had to move into the Rental Unit. BAS stated the registered owners of the Rental Unit expected the three parents of SPS and MPS to arrive from India in January 2022. When I pointed out that the prior testimony of BAS was that the relatives were arriving in January 2022, the Purchaser stated the insurance required the Rental Unit be occupied from day one of the occupancy date to satisfy the requirements for the mortgage.

The Purchaser stated he believed the new tenants moved into the Rental Unit sometime in June 2022. BAS clarified that the Purchaser moved furnishings into the Rental Unit and the Purchaser slept in the Extension and the Rental Unit, on and off, immediately after the possession date provided for in the Sale Agreement. When I asked, neither the Purchaser nor BAS could recollect the exact dates of closing of Sale Agreement., The Purchaser stated he moved into the Rental Unit right after possession, slept in the Rental Unit and used the Rental Unit on multiple occasions.



The Tenant stated that, after he was given notice, he believed the Purchaser and his relatives moved into the Extension to the residential property and not the Rental Unit. The Tenant stated that, when he drove by the residential property, he observed significant cosmetic modifications were made to the residential property. The Tenant stated that a fence, that was originally located between the residential property and the Adjoining Property prior to the sale of the Rental Unit to the Purchaser, was relocated so as to separate the Rental Unit and the Extension. The Tenant stated the modifications included the installation of a new driveway that the Tenant presumed was for new renters to access the Rental Unit. The Tenant stated the Facebook Marketplace advertisements appeared sometime in January 2022. When I asked, BAS confirmed the advertisements were placed around January 2022.

The Tenant stated it was extremely hard to find alternative accommodations after receiving the 2 Month Notice. The Tenant stated it was disheartening to see the advertisements for the upper and lower portions of the Rental Unit that sought more rent than what the Tenant was paying for the Rental Unit. The Tenant stated the only damage in the Rental Unit was a hole in a ceiling that was made by a service technician when the Landlord had an air conditioner or heat pump installed. The Tenant stated the hole existed at the time of the Purchaser viewed the Rental Unit before the offer to purchase the residential premises. The Tenant denied he or other occupants of the Rental Unit caused any damages.

The Purchaser stated the photos submitted into evidence show the upper and lower parts of the Rental Unit were empty. The Landlord stated they were still in possession of the Rental Unit, that it was their property, they were still using the Rental Unit and they were not benefiting from having a tenant. The Purchaser stated he moved into the Rental Unit within 15 days of the possession date stated in the Sale agreement. The Purchaser stated the fence referred to by the Tenant was relocated to prevent their dog from getting onto the highway and not for the purpose of renting the Rental Unit.

During the Adjourned Hearing, I requested the Landlord provide a copy of the Sale Agreement and a copy of the new tenancy agreement. The Purchaser submitted a signed copy of the Sale Agreement after the Adjourned Hearing but did not submit a copy of the tenancy agreement. As such, I issued an Interim Decision dated March 13, 2023, in which I ordered the Purchaser to provide a copy of the tenancy agreement ("New Tenancy Agreement") referred to during the Adjourned Hearing. I have reviewed the Sale Agreement and find it corroborates the testimony of the Purchaser and BAS that the Purchaser had the right to add a name or names to the Sale Agreement before completion of the Sale Agreement. The Sale Agreement also stated the closing date of the purchase of the residential property was November 29, 2021 and the possession

date of the residential property was November 30, 2021. I have reviewed the New Tenancy Agreement and it states the tenancy commenced with the new tenants on May 15, 2022.

### Analysis

The Tenant seeks \$38,400.00 in compensation from the Purchaser pursuant to section 51(2) of the Act on the basis that the Purchaser, or a close member, failed to use the Rental Unit for the stated purpose in the 2 Month Notice.

Sections 49(1) of the Act defines a “close family member”, “landlord” and “purchaser” as follows:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, *for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.*

[emphasis in italics added]

Sections 49(2), 49(5), 51(2) and 51(3) of the Act state:

- 49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
  - (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) *not earlier than 2 months after the date the tenant receives the notice,*
- (ii) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

- 49(5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser 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.

- 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.*
- 51(3) The director may excuse the landlord or purchaser from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or purchaser from
- (c) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
  - (d) 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 in italics added]

Pursuant to rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. In these circumstances, subsection 51(2) of the Act requires that the Purchaser establish the Rental Unit has been used by the Purchaser, or a close family member, for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice and 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.

The Tenant stated the Tenancy Agreement embodied the terms of the tenancy with the Former Landlord. The Purchaser would not admit the terms stated in the Tenancy Agreement were the correct terms of the tenancy the Tenant had with the Former Landlord. However, the Purchaser admitted he was provided with a copy of a tenancy agreement from the Former Landlord. The Purchaser did not submit a copy of the tenancy agreement the Former Landlord provided him nor did the Purchaser provide

any testimony to contradict the terms stated in the Tenancy Agreement provided by the Tenant. As such, I find, on a balance of probabilities, that the terms of the tenancy are the terms stated in the Tenancy Agreement. I find the month rent paid by the Tenant was \$3,200.00.

The effective date for move out stated on the 2 Month Notice was November 29, 2021. Section 49(2) provides a notice to end tenancy must be not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In the present case, the Tenancy Agreement required the Tenant to pay the rent on the 1<sup>st</sup> day of each month.

Section 53 of the Act states:

- 53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement
  - (a) that complies with the required notice period, or
  - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

The Tenant stated he was served with the 2 Month Notice sometime in September 2021. Pursuant to section 53(2), I find the deemed effective date ("Deemed Effective Date") of the 2 Month Notice was November 30, 2021. The Purchaser stated he understood from the 2 Month Notice and Purchaser's Notice that the Purchaser was the only purchaser of the Rental Unit. The Purchaser and BAS stated the Sale Agreement

permitted other parties to be added to the Sale Agreement. BAS stated the purchasers on closing were the Purchaser, SPS and GPS. The Purchaser submitted a Certificate of Title to corroborate his testimony on ownership of the residential property.

It may be a common practice in real estate transactions for a purchaser listed on a purchase and sale agreement to add additional purchasers to the purchase and sale agreement or for there to be a direction to the vendor to arrange for registration of title in the name of additional parties. However, I find that it is not permissible under the Act for the purchaser(s) named on the Two Month Notice to End Tenancy to subsequently add additional purchasers. Otherwise, the Tenant would have no idea of the identity of the purchasers and whether he or she should dispute the Two Month Notice within the 15 day period permitted by section 49(8) of the Act. I find that, to consider SPS and GPS as additional purchasers of the Rental Unit for the purposes of the 2 Month Notice, would otherwise be contrary to the remedial objectives of the Act and the protections intended to be afforded to tenants by the Act. As such, I find the Purchaser is the only purchaser for the purposes of section 49(1) of the Act. I also find that, as SPS and GPS are the Purchaser's brothers, they are not "close family members" of the Purchaser as that expression is defined in section 49(1) of the Act.

Section 51(2) states the Purchaser must pay the Tenant compensation that is equivalent to 12 months rent if the Purchaser or close family member do not use the Rental Unit for the purpose stated in the 2 Month Notice. *Residential Tenancy Policy Guideline 50* ("PG 50") provides guidance respecting use and occupancy of a rental unit by a landlord or purchaser when a Two Month Notice to End Tenancy for Landlord's Use of Property is given and extenuating circumstances. PG 50 states in part:

### **Reasonable Period**

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. 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. 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.*

[...]

#### **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 in italics added]

As stated in PG 50, a reasonable period is 15 days after the effective date of a Two Month Notice to End Tenancy.

*Residential Tenancy Policy Guideline 2A* (“PG 2A”) also provides guidance on ending a tenancy for occupancy by a landlord, purchaser or close family member. Part C of PG 2A states:

**C. OCCUPYING THE RENTAL UNIT**

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

***Vacant possession***

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

The Deemed Effective Date of the 2 Month Notice was November 30, 2021. At the Original Hearing, the Purchaser stated SPS moved into the Rental Unit after the Deemed Effective Date but he did not move into it. At the Adjourned Hearing, the Purchaser stated he moved into the Rental Unit within 15 days of the Deemed Effective Date. There were a number of other inconsistencies in the testimony given by the Purchaser and BAS. Notwithstanding this contradictory evidence, I find it is unnecessary for me to make a determination on whether the Purchaser or a close family member of the Purchaser actually moved into the Rental Unit at any time after the Deemed Effective Date. The Purchaser was required to occupy the Rental Unit within a reasonable period of time after the Deemed Effective Date and use it for his own use for



a minimum period of six months, being May 31, 2022. BAS stated the Purchaser rented the lower portion of the Rental Unit but did not state when this occurred. As such, I do not know whether this occurred during the six month period after the Deemed Effective Date. However, the New Tenancy Agreement states the tenancy with the new tenants commenced on May 15, 2021. As such, the Purchaser did not occupy the Rental Unit within a reasonable period of time after the Effective date and occupy it for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Purchaser and BAS provided significant testimony on the family's intention that SPS, his wife and their parents and grandfather would occupy the Rental Unit. BAS stated the death of the grandfather changed the family's plans for the Rental Unit. However, as I have noted above, I have found the Purchaser of the Rental Unit, for the purposes of sections 49 and 51(2) is the Purchaser and that SPS is not a close family member for the purposes of section 51(3). As such, I find the testimony on any change in family's plans for the use of the Rental Unit by SPS and his family are not relevant to whether there were extenuating circumstances. As such, it is my opinion that, pursuant to section 51(3), I find the Purchaser has not proven, on a balance of probabilities, that there were any extenuating circumstances that prevented the Purchaser from accomplishing, within a reasonable period after the Deemed Effective Date of the 2 Month Notice, the stated purpose and using the Rental Unit for that stated purpose for at least 6 months duration, beginning within a reasonable period after the Deemed Effective Date of the 2 Month Notice.

Based on the foregoing, I find the Purchaser has not established pursuant to section 51(2) of the Act, on a balance of probabilities, that he occupied the Rental Unit for his own use and used the Rental Unit for at least 6 months' duration, beginning within a reasonable period after the Deemed Effective Date of the 2 Month Notice. Pursuant to section 51(3) of the Act, it is my opinion that there were no extenuating circumstances that excuse the Purchaser from paying the Tenant the amount required under section 51(2) of the Act. Based on the foregoing, I order the Purchaser to pay the Tenant compensation that is equivalent to 12 times the monthly rent of \$3,200.00 that the Tenant was paying the Former Landlord at the time the tenancy ended, being \$38,400.00.

As the Tenant have been successful in the Application, I order the Purchaser to pay the Tenant \$100.00 to reimburse him for the filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a Monetary Order for \$13,300.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent (12 x \$3,200.00)	\$38,400.00
Reimbursement of Filing Fee for Application	\$100.00
<b>TOTAL</b>	<b>\$38,500.00</b>

The Tenant is provided with this Order on the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court as an Order of that 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 *Residential Tenancy Act*.

Dated: April 2, 2023

---

Residential Tenancy Branch