



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, MNETC, FFT  
                             MNETC, FFT  
                             MNDCT, MNETC, FFT

### Introduction

This hearing dealt with three tenant applications for dispute resolution under the *Residential Tenancy Act* (the “Act”). These applications were joined and heard at the same hearing pursuant to Rule 2.10 of the Residential Tenancy Branch Rules of Procedure.

Each of the Tenants applied for compensation of 12 months’ rent for their respective rental unit pursuant to section 51(2) of the Act, and recovery of their respective filing fee pursuant to section 72(1) of the Act. Tenants JH and SL also applied for aggravated damages pursuant to section 67 of the Act.

Tenants JH, SL, and SM attended this hearing and gave affirmed testimony. The Tenants were represented by their advocate MB. Tenant JH was also assisted by her daughter KH.

XG (the “Purchaser”) attended this hearing and gave affirmed testimony on behalf of both Purchasers.

The parties acknowledged receipt of each other’s materials for dispute resolution, including the notice of dispute resolution proceeding packages, requests to join applications, and the parties’ evidence.

### Preliminary Matter – Withdrawal of Claims for Aggravated Damages

MB confirmed that Tenants JH and SL were withdrawing their claims for aggravated damages. Therefore, this decision will only address the Tenants’ claims for compensation of 12 months’ rent and recovery of their filing fees.

### Issues to be Decided

1. Are the Tenants entitled to compensation of 12 months' rent?
2. Are the Tenants entitled to recover their filing fees?

### Background and Evidence

While I have turned my mind to all the evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' applications and my findings are set out below.

The rental units previously occupied by the Tenants are three of four suites in a duplex property officially identified under a single address (the first of three addresses referenced on the cover page of this decision).

Tenant JH resided in her unit from January 2003 to January 15, 2022. At the time that her tenancy ended, JH paid monthly rent of \$730.73.

Tenant SM resided in her unit from June 1, 2008 to January 31, 2022. SM's monthly rent was \$840.00.

Tenant SL resided in her unit from September 2018 to December 15, 2021. SL's monthly rent was \$1,000.00.

In October 2021, the Purchasers entered into a contract of purchase and sale to purchase the duplex property from the previous owner. The Purchasers signed a buyers notice to seller for vacant possession dated October 20, 2021 (the "Buyers' Notice").

In addition to the Buyers' Notice, the Tenants were each served with a two month notice to end tenancy for landlord's use of property dated October 26, 2021 (collectively, the "Two Month Notices"). According to these notices, the reason for ending the tenancies 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." The effective date stated on each of the notices was January 6, 2022.

The Tenants applied to dispute the Two Month Notices (see related file numbers on the cover page of this decision). Following a hearing on January 17, 2022, the arbitrator granted orders of possession for the rental units to the Purchaser on February 3, 2022.

The Purchasers have been joint registered owners of the duplex property since January 2022.

The Purchasers' evidence and submissions were as follows:

- The Purchasers purchased the duplex property with the intention of moving here from another province, so that they can live with their two children who were attending university at the time. The Purchasers liked the property because it has four units. The Purchasers' children would each take one unit, the Purchasers would share a unit, and one unit would be used as a home office.
- The Purchasers' original intention was to make quick improvements for one month before moving in. The key improvements were replacing carpet with hardwood or tile flooring, replacing toilets, and repairing the shower or bath areas. These improvements were essential and would be hard to work on after the Purchasers moved in. The Purchasers did buy new appliances and completed other repairs which could have been done after moving in.
- Work for the improvements lasted nearly four months instead of one month due to unexpected reasons. First, there was an unprecedented and unexpected shortage of materials starting in 2022, at the end of covid-19. The wait time for materials such as tiles was three months. Second, the property was broken into and vandalized on May 6, 8, and 12, 2022. These break-ins resulted in damage and delays.
- Despite the delay caused by material shortages, the Purchasers' family had still planned to move in as soon as possible. However, the three break-ins caused the Purchasers' family to change their minds about moving in. They felt that the nature of the break-ins was highly suspicious and were targeted attacks rather than normal theft.
- The first break-in on May 6, 2022 appeared like a normal theft. Copper pipes were cut and tools were stolen. However, the second and third break-ins were highly unusual. On May 8, 2022, nothing but electric wires were cut, including wires on the fridge, washer, and dryer. The wires were worth next to nothing but took a lot of effort to repair. The Purchasers felt the incident was more like intentional sabotage solely to cause delays rather than to get money. Other easy to carry and more valuable items, such as a microwave, were not stolen.
- On May 12, 2022, the perpetrator cut off a piece of the gas line, leaving gas running. The piece of pipe stolen was not valuable, and other houses had gas pipes outside, which could have been stolen without being broken into. The cut gas line could have caused an explosion if there were any sparks, and people could have been killed. After discussing with their friends, including a retired

police officer, the Purchasers believed these patterns were highly unusual, especially the gas line cutting. The Purchasers suspected that these attacks were retaliation or effort to prevent them from moving in. The Purchasers were concerned about their family's safety if they were to move in.

- By May 2022, the Purchasers decided to rent out the property as they had spent a lot of money and were no longer able to move in. The Purchasers wanted to recoup some of the renovation costs and wait for the market to recover before they exit. The Purchasers suspected that the attacks would stop once they no longer wanted to live there. It took another few weeks for the repairs to wrap up and for the units to be rented out. There were more valuables in the property and the security measures had not changed much. The attacks ceased after the Purchasers posted the property for rent. The Purchasers were more convinced that the attacks were meant to discourage them from moving in.
- The Purchasers' intention was to move into the property and not to buy it as a rental. The housing prices are a little cheaper in the Purchasers' home province and the rental market is just as hot.

In response to questioning by MB, the Purchaser testified as follows:

- The Purchaser met the contractor and received a quote for the renovation in February 2022.
- New kitchens were put in all units, some not as quickly as the others. These were not mandatory but were added on since the Purchasers were waiting for other materials. The units were equipped more fully with a fridge, stove, washer, and dryer once the Purchasers decided to rent the units out.
- The property was generally vacant during the renovation, other than for two nights between the first and second break-ins when a friend was there. The Purchasers had security cameras but did not install security alarms. The Purchasers had a bad experience in their current home with false alarms. The police did not provide much help or suggestions for improving security. FortisBC mentioned the gas line was cut in the course of a copper theft, but they are not the police and this did not make the Purchasers feel better. The Purchasers did not get a statement from their retired police officer friend. The Purchasers did research about crime in the area before the purchase and nothing had stood out. There is a difference between reading statistics versus something happening personally.

The Purchasers argue that:

- Their original plan of a one-month renovation was within the scope of the Two Month Notices. The supply chain issues and break-ins were unforeseeable. The

extended repair and renovation time was beyond the Purchasers' control and not their intention.

- The Purchasers were shaken by the repeated break-ins and deliberate attacks on their property, including the blatant disregard of safety and human life in the last break-in. The Purchasers suspected that these were targeted vicious attacks rather than random crimes. The Purchasers' family could not move in for fear of their safety. The attacks could not have been anticipated at the time of purchase and were outside the Purchasers' control. The Purchasers request to have their situation considered for an extenuating circumstance.

The Tenants' evidence and submissions were as follows:

- After moving out, the Tenants observed extensive renovations going on in the rental units through spring and summer of 2022. It did not appear that the Purchasers or their children were moving in. The Tenants observed a rental ad posted on July 20, 2022 for one of the units at \$2,395.00 per month. The Tenants found other rental ads posted in June and July 2022. The Tenants also found a short-term rental ad for \$150.00 per day. The Tenants recognized their previous units based on the location, size, and configuration shown in the ads. The units were available for rent by June 15 or July 15, 2022, and were fully rented by August 1, 2022.
- At the previous hearing, the Purchasers indicated that they did not visit the property in person before the purchase. The Purchasers indicated they were satisfied by their internet searches that it would be suitable for their family. The Purchasers did not obtain quotes or information about construction costs in advance. The Purchasers' evidence about construction delays dates from January 2022, before the parties' previous hearing.
- The Purchasers have not provided evidence about any serious arrangement that they made to move their family to the property.

The Tenants argue as follows:

- Photos from the rental ads show that the Purchasers made major renovations to the units including kitchen cabinetry, bathroom shower enclosures, and flooring. It is unlikely that the extra work to renovate the units into new rentals would have been implemented in the time between mid-May 2022 and June or July 2022.
- The Purchasers failed to do due diligence prior to purchasing the property. If the Purchasers had done due diligence, they would have learned of construction material shortages, as those were not new in February 2022.

- The Purchasers' suggestion that the break-ins may have been targeted is speculative. The Purchasers did not submit evidence of any threats or security recommendation by police. The Purchasers' decision to not put in security due to their bad experience with false alarms undermines their claim about serious risk. Empty construction sites are likely to be broken into and have copper stolen.
- It is understandable that delays and break-ins may contribute to the Purchasers changing their minds about moving into the property, but fundamentally this is still about the Purchasers changing their minds. The Purchasers displaced long-term tenants without occupying the property.

### Analysis

#### *1. Are the Tenants entitled to compensation of 12 months' rent?*

Section 49(5) of the Act permits a landlord to 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.

Section 49(1) of the Act defines a "purchaser" to mean a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit. Section 49(1) further defines an individual's "close family member" to include the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

In this case, I find the Tenants' tenancies were ended pursuant to the Two Month Notices, which were issued in accordance with section 49(5) of the Act.

I find the Purchasers are each a "purchaser" as defined under section 49(1) of the Act and had asked the previous landlord in writing to issue the Two Month Notices to the Tenants. I find the stated purpose of the Two Month Notices was for the Purchasers or their close family member to occupy the rental units.

The Tenants seek compensation of 12 months' rent from the Purchasers under section 51(2) of the Act, which 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.

I find it is undisputed that none of the Purchasers or their close family members moved into any of the three rental units after the tenancies ended. As such, I find the stated purpose of the Two Month Notices was not accomplished within a reasonable period after the effective date, and the units were not used for that purpose for at least six months.

Under section 51(3) of the Act, a purchaser may be excused from paying compensation to the tenant if there were "extenuating circumstances" that "prevented" the purchaser from accomplishing the stated purpose of the notice to end tenancy, as follows:

(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 underlined)

According to Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy describes extenuating circumstances as follows:

## **G. EXTENUATING CIRCUMSTANCES**

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

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.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

(emphasis underlined)

The Purchasers submit that their family decided to not move into the property because of the break-ins on May 6, 8, and 12, 2022, as they believed the attacks were targeted.



However, I find the Purchasers have not provided any information about the identity of the perpetrator(s) or possible personal motives for targeting the Purchasers' family. I find there is no evidence of threats made against any of the Purchasers' family members.

I find the property was similar to a vacant construction site during the renovation period, which would have made it more vulnerable to theft and vandalism. I find there were surveillance cameras on the property, but no security alarms or guards.

I find the descriptions of the break-ins, including the cutting of copper pipes, wiring, and the gas line, to be consistent with signs of copper theft. I find there is insufficient evidence to suggest that the gas line had likely been cut with the intent to cause personal injury, rather than in the course of committing copper theft.

Overall, I do not find the evidence to show that the safety of the Purchasers' family would have likely been at risk if they moved into the property. Therefore, I am not satisfied that the break-ins constituted extenuating circumstances preventing the Purchasers' family from moving in. I find the Purchasers' family could have still moved into the property and occupied the rental units after the renovations completed, but decided not to do so.

I conclude there is insufficient evidence of extenuating circumstances that would excuse the Purchasers from paying compensation to the Tenants.

Pursuant to section 51(2) of the Act, I order the Purchasers to pay compensation of 12 months' rent to each of the Tenants, as follows:

- $\$730.73 \times 12 \text{ months} = \$8,768.76$  to Tenant JH
- $\$840.00 \times 12 \text{ months} = \$10,180.00$  to Tenant SM
- $\$1,000.00 \times 12 \text{ months} = \$12,000.00$  to Tenant SL

## *2. Are the Tenants entitled to recover their filing fees?*

The Tenants have been successful in this application. I award the Tenants reimbursement of their filing fees under section 72(1) of the Act.

## Conclusion

The Tenants' claims for compensation of 12 months' rent and recovery of their filing fees are successful.

Pursuant to sections 51(2) and 72(1) of the Act, I grant a Monetary Order to each of the Tenants as follows:

**To Tenant JH**

<b>Item</b>	<b>Amount</b>
Compensation of 12 Months' Rent ( $\$730.73 \times 12$ months)	\$8,768.76
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant JH</b>	<b>\$8,868.76</b>

**To Tenant SM**

<b>Item</b>	<b>Amount</b>
Compensation of 12 Months' Rent ( $\$840.00 \times 12$ months)	\$10,080.00
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant SM</b>	<b>\$10,180.00</b>

**To Tenant SL**

<b>Item</b>	<b>Amount</b>
Compensation of 12 Months' Rent ( $\$1,000.00 \times 12$ months)	\$12,000.00
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant SL</b>	<b>\$12,100.00</b>

These Monetary Orders may be served on the Purchasers, filed in the Small Claims Division of the Provincial Court, and enforced as orders 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 Act.

Dated: September 07, 2023

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Residential Tenancy Branch