



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## DECISION

Dispute Codes: MNDC & FF

### Introduction:

This hearing dealt with the tenants' application for a monetary claim related to damage or loss under the *Act* due to breach of the tenancy agreement or *Act* by the landlord. Both parties appeared for the hearing, gave affirmed evidence and had the opportunity to respond to the evidence of the other party.

### Issues to be Determined:

Are the tenants entitled to compensation pursuant to section 51 of the *Act*? Are the tenants entitled to compensation due to loss of quiet enjoyment during the tenancy?

### Background and Evidence:

This tenancy began on June 1, 2006 for the monthly rent of \$1,100.00. The tenants paid a security deposit of \$550.00 on May 2, 2006. The tenancy was originally a fixed term lease which ended on June 1, 2007 and then reverted to a month to month tenancy. The tenancy ended effective September 30, 2007 after the tenants were served with a two month Notice to End Tenancy for landlord's use of the rental unit pursuant to section 49 of the *Act*.

The tenants' claim is two-fold:

1. The tenant is seeking compensation due to loss of quiet enjoyment for the period of approximately May 2008 to September 2008 due to the landlord's failure to comply with the *Act* in giving proper notice to access the rental unit while attempting to sell the home; and
2. Compensation pursuant to section 51 of the *Act* as the tenant alleges that the landlord did not fulfill the purpose of the two month Notice to End Tenancy pursuant to section 49 of the *Act*.

Both the landlord and the tenant provided testimony respecting the events that transpired between May 2008 and September 2008 and evidence respecting the landlord's use of the rental unit after the tenancy ended.

### Analysis:

As the tenants are making an application for compensation under the *Act* due to alleged breaches of the *Act* by the landlord, the tenants have the burden of proving their applications.

Based on the evidence before me, including the affirmed testimony of the parties, I allow the tenants' application in part.

I find based on the evidence submitted by the landlord that the landlord did fulfill the purpose intended in the Notice to End Tenancy. I accept the landlord's evidence in this manner over the speculative evidence presented by the tenant. I accept that the landlord occupied the rental unit after serving the tenant notice as stated. The *Act* places no requirements on number of hours or days or months a landlord is to be in the rental unit. It is sufficient to establish that this was the landlord's residence within a reasonable period of time following the effective date of the two month Notice to End Tenancy.

I find there is no basis to award the tenant compensation pursuant to section 51 of the *Act*, as I am satisfied that the landlord fulfilled the intended purpose of the two month Notice to End Tenancy.

I do however accept the tenants' application for compensation due to loss of quiet enjoyment during the period from May 2008 to September 2008. I accept the tenants' evidence over that of the landlord respecting the multiple disruptions that occurred while the landlord was attempting to market and sell the rental unit. I accept that on numerous occasions the landlord, or an agent of the landlord, gained access to the rental unit without proper notice or the consent of the tenants. I also accept that the landlord unreasonably attempted to have the tenants sign a mutual agreement end the tenancy, for the purpose of avoiding the *Act*, and that the landlord significantly disrupted the tenants by making accusations about the condition of the rental unit after entering without consent or notice.

The landlord failed to provide any evidence to show that she took necessary and reasonable steps to ensure the tenants' quiet enjoyment was acknowledged and protected during this time. I find that the evidence establishes that the landlord clearly took no steps or responsibility to mitigate the impact of marketing her home on the lives of the tenants.

However, I do not accept that this disruption negated the tenants' full enjoyment of the rental unit for this entire time period. Clearly the tenants remained until the end of the effective date of the two month Notice to End Tenancy. The tenants were also compensated for the end of the tenancy pursuant to section 49. Therefore, it is my determination that the tenants' be compensated the sum of \$100.00 for the five months in which there was disruption caused by the landlord's failure to comply with the *Act* and provide proper notice to enter the rental unit.

I also grant the tenants' request to recover the \$50.00 filing fee paid for this application for the total sum of \$550.00.

Conclusion:

I grant **\$550.00** representing the loss of quiet enjoyment due to the landlord's breach of the *Act* from May to September 2008. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated December 31, 2008.

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Dispute Resolution Officer