



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNSD FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

The Landlords, and the Tenant gave affirmed testimony and this Application proceeded on its merits.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the Tenant is entitled to a monetary order for double the monthly rent under Section 51(2) of the Act; and
- Whether the Tenant is entitled to recover the filing fee of \$50.00 from the Landlords.

### **Preliminary Matters**

The Tenant misspelled the Landlord CW’s surname in her Application for Dispute Resolution. Pursuant to Section 64(3)(c) of the Act, I have amended the application to reflect the proper spelling of the Landlord CW’s surname.

### **Background and Evidence**

On the affirmed testimony of the Tenant and the acknowledgement of the Landlords, I am satisfied that the Landlords were duly served with the Application for Dispute Resolution and Notice of Hearing package by registered mail.

Facts on which the parties agree:

The Landlord issued a Notice to End Tenancy for Landlord's Use of Property on May 5, 2008, effective July 31, 2008. The Tenant was duly served with the Notice to End Tenancy.

The rental unit was advertised for rent in early November, 2008.

Tenant's evidence:

The Tenant testified that she is applying for damages in the amount of double the monthly rent because her understanding is that the Landlords, or a close family member of the Landlords, are required to be resident in the rental unit, and that the rental unit can not be rented out to others for at least 6 months following the end of her tenancy. The Tenant stated that the rental unit has not been occupied as a residence of the Landlords, or a close family member of the Landlords, and was advertised for rent before the 6 month term expired. Therefore, she feels she is entitled to compensation under the Act for double the monthly rent.

The Tenant's witness gave affirmed testimony at the hearing. The Witness stated that she lives beside the Landlords' rental unit and confirmed that the rental unit is not in full occupancy. She stated that occupation is sporadic, but that the rental unit is not continually occupied.

Landlords' evidence

The Landlord CW testified that they did advertise the rental unit, but that the reason for the advertisement was to test the rental market. The Landlord CW testified that there is a vacation rental booked in the property from May 15 – 29, 2009.

The Landlords currently reside in the United States. The Landlord CW testified that he and his wife need the use of the rental unit in order to stay there while visiting an elderly parent, who resides in an elderly care facility in Sidney, B.C. The Landlord CW testified that he and/or his wife stayed at the rental unit from August 1 to August 27, 2008 and

from November 5 to November 11, 2008. The Landlord CW testified that his son stayed in the rental unit from November 27 to 30, 2008 and that the Landlord BC will be staying in the rental unit from March 7 to 9, 2008.

The Landlord testified that no one has stayed in the cottage other than family members since the Tenant vacated the unit.

The Landlords provided copies of ferry receipts, car rental invoices and credit card bills to prove that the property was being used by them in August and November of 2008.

### **Analysis**

I carefully considered sections 4, 49 and 51 of the Act when coming to my decision.

I find that the Landlords have complied with section 49 of the Act and have been occupying the rental unit. The Landlords first made use of the rental unit in August, 2008, and I find that this is a reasonable period of time after the effective date of the notice. The Act does not stipulate that the Landlord or a close family member have to take up permanent residence in the rental unit, it merely states that the Landlord or a close family member intends in good faith to occupy the rental unit.

The Landlords are renting out the property short term as a vacation rental, starting in May of this year. May is more than 6 months from the effective date of the Tenant's end of tenancy, and in any event the Residential Tenancy Act does not apply to vacation rentals (see section 4(e) of the Act).

I therefore dismiss the Tenant's application in its entirety. Attached to my decision are the relevant sections of the Act for the parties' information.

### **Conclusion**

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

February 27, 2009

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