



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other parties' submissions.

### Issues(s) to be Decided

1. Have the tenants established an entitlement to compensation equivalent to two month's rent under section 51(2) of the Act?
2. Award of the filing fee.

### Background and Evidence

I heard undisputed testimony that the tenants had been served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice). The tenants had disputed the Notice under file no. 239781. A hearing was held on July 18, 2008 and the Dispute Resolution Officer ordered that the tenancy would end by mutual agreement on August 31, 2008. The Dispute Resolution Officer also found that the tenant's compensation provisions contained in section 51(1) of the Act would apply. The tenants vacated the rental unit on August 31, 2008.

The tenant testified that the landlord had served the Notice with the explanation that the landlord's invalid mother would be moving into the rental unit. The tenant alleged that the landlord's mother did not move in to the rental unit until approximately 2 months ago. The tenant testified that she looked in the sliding glass door of the rental unit approximately two months ago and did not see any furniture. The tenant also alleged

that the tenant's mother and the landlord's mother had spoken at shuffleboard approximately two months ago during which time the landlord's mother asked the tenant's mother if the tenant would like her tablecloth back as the landlord's mother was about to move in to the rental unit. Upon enquiry, the tenant could not recall when her tenancy began and attributed her lack of memory to a car accident.

The landlord testified that his mother moved in to the rental unit in September 2008 and that the tenant's allegations are completely false. The landlord alleged that the tenant did not come on the property and look in the windows and that the tenants are just trying to get money from the landlord. The landlord's mother provided a written statement and appeared at the hearing to confirm that she moved in to the rental unit in September 2008. The landlord's mother also testified that she had spoken to the tenant's mother approximately one year ago and did not have a conversation about a tablecloth.

The parties could not agree on other facts such as how the tenant came to become aware of the rental unit and how long the tenant's parents had known the landlord's parents.

## Analysis

The party that makes a claim against another party has the burden to prove their entitlement to the claim based on the balance of probabilities. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

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In this case I was presented with mostly disputed verbal testimony. I did not find the disputed verbal testimony sufficient to prove the tenants' entitlement to compensation. I also had reservations about the tenant's recollection of time lines. Much of the tenant's position was based on the premise that the landlord's mother did not move in until approximately two months ago, yet the tenant could not recall when her tenancy commenced and did not provide an exact date when the tenant allegedly looked into the windows of the rental unit. In light of these findings, I do not find that the tenant sufficiently proved that the landlord's mother moved in to the rental unit only two months ago.

In light of the above finding, I dismiss the tenants' claim without leave to reapply and I make no award for recovery of the filing fee.

### Conclusion

The tenants' application is dismissed in its entirety.

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: May 07, 2009.

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Dispute Resolution Officer