



# Dispute Resolution Services

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

## **DECISION AND REASONS**

Dispute codes: CNL, MNDC, OLC, FF

### Introduction

This was an application by the tenants for monetary orders, including compensation from the landlord equivalent one month's rent and to double the monthly rent payable under the tenancy agreement pursuant to section 51(1) and 51(2) of the *Residential Tenancy Act* (Act) and for recovery of the filing fee for this application. The hearing was conducted by conference call; the named tenant and the named landlord participated in the hearing.

The tenants applied for an order cancelling a notice to end tenancy and an order that the landlord comply with the Act, but the tenant moved out pursuant to the Notice to End Tenancy and the only matters before me relate to the tenants' claim for a monetary order.

### Background and evidence

The tenants rented a basement apartment from the former owners of the rental property. The tenancy began in August 2007. They paid rent of \$625.00 per month. The property was sold to the respondents in June of 2009.

Since their purchase the landlords have attempted to persuade the tenants to agree to a rent increase, or to pay a portion of the utilities that were included in their rent under the tenancy agreement. The tenants refused to agree to the landlords' proposals to pay more rent or utilities. The landlord gave the tenants a two month Notice to End Tenancy for landlords' use. The Notice was dated August 7, 2009 and it required the tenants to move out by October 31, 2009. Two incompatible reasons for the Notice were stated: the first was that the rental unit would be occupied by the landlord or the landlord's spouse or a close family member. The second was that the landlord has all necessary

permits required by law and intends to demolish or to repair the rental unit in a manner that requires it to be vacant.

I was not provided with any evidence to suggest that the landlords intend to demolish or repair the rental unit.

The tenants responded to the Notice by advising the landlords that they intended to move out early. The tenant testified that he gave the landlord a written notice that they were moving out on August 27, 2009. The tenant did not provide a copy of the letter that he described as a 10 day notice. The tenants moved out at the end of August.

The tenant testified that after he moved out he saw an advertisement on the internet for what he believed was the rental unit. He said that he was advised by a neighbour that the rental unit was occupied by renters who moved in on September 3, 2009.

The landlord testified that the property had not been re-rented, but it is now occupied by his mother's sister; his mother is the co-owner. He testified that his aunt moved into the rental unit on September 8, 2009.

The tenants have claimed compensation equivalent to one month's rent that they say they are entitled to pursuant to Section 51 of the Residential Tenancy Act because they were given a two month Notice for Landlord's use. They claim the further sum of \$1,250, or two month's rent because they contend that the landlord has not used the rental unit for the purpose stated in the Notice to End Tenancy and they are therefore entitled to an amount equivalent to double the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

### Analysis and conclusion

It is not necessary to make a finding as to whether the tenant's version of events is correct, namely: that the unit has been re-rented, or whether the landlord's version is correct: that the unit is occupied by his aunt, because in either case, the landlords have not used the rental unit for the stated purpose in the notice given to the tenants.

Section 49 (3) of The Residential Tenancy Act provides that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 (1) defines "close family member as follows:

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

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

The landlord testified that the rental unit is occupied by his aunt who is the sister of the co-landlord. Sister or aunt does not fall within the definition of "close family member" provided by the Act, so even accepting the landlords' version of events the landlords are in breach of the provisions of the Act because they did not use the unit for the purpose stated in the Notice to End Tenancy and they are therefore liable to pay the tenants double the amount of the rent due under the tenancy agreement. I award the tenants the claimed amount of \$1,250.00.

I find that because the tenants did not give the landlord a proper 10 day Notice and only gave the landlord written notice of their intentions on August 27, 2009 that the following month of September, 2009 constituted the last month of the tenancy. They did not pay rent for September and I find they were compensated because the landlord did not demand payment of rent for September despite the lack of proper Notice. The tenants' security deposit was returned to them at the end of the tenancy.

The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,300.00 and I grant the tenants an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court

Dated September 30, 2009.