

## **DECISION**

### **Dispute Codes**

MNDC, FF

### **Introduction**

This is the Tenants' application for a Monetary Order for compensation for damages or loss; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Decided**

- Are the Tenants entitled to compensation in the equivalent amount of two month's rent, under the provisions of Section 51(2) of the Act?

### **Background and Evidence**

The following facts were not in dispute:

- This tenancy ended on September 17, 2009, as a result of a two month Notice to End Tenancy for Landlord's Use.
- Monthly rent was \$700.00, due on the first day of each month.
- The Landlord lives in the upstairs suite at the rental property. The rental unit is in the downstairs suite.

The Tenant MY and her agent gave the following testimony:

The Landlord told the Tenants that her granddaughter would be moving into the rental unit. The Tenants walk by the rental unit regularly while taking their child to school. The Tenants had a previous dispute resolution hearing, on which they were successful. They were delivering documents from the prior Hearing to the Landlord at the rental property, when they saw the new occupants of the rental unit. The Tenants had a conversation with the new occupants, who stated that they were not related to the Landlord.

The Tenants seek compensation because they do not believe a close relative of the Landlord's is living in the rental unit, contrary to the reason given to end the tenancy.

The Landlord gave the following testimony

The Landlord's daughter, not her granddaughter, has moved into the rental unit. The Landlord's daughter used to live upstairs with the Landlord, but moved downstairs. The Landlord's daughter is mentally challenged and the Landlord was given a government grant to help her teach her daughter some life skills so she can live on her own. The new occupants are friends of the Landlord who are helping to teach the Landlord's daughter how to cook and use the computer.

The Tenant MY and the Tenants' agent gave the following reply:

The Tenants do not believe that the Landlord's daughter is living downstairs. When they spoke to the new male occupant, he said he lived downstairs but did not say anything about living with the Landlord's daughter.

**Analysis**

The Landlord was served with the Notice of Hearing package and the Tenants' Application. She was aware of the nature of the application. The Landlord did not provide supporting documentary or oral evidence that her daughter was living

downstairs in the rental unit. For example, the new occupants did not attend as witnesses in the Hearing, nor did they provide written statements attesting that they were living in the rental unit to assist the Landlord's daughter. This corroborating evidence would have been easier for the Landlord to gather than the Tenants, who have no relationship with the new occupants. The Landlord testified that she was given a government grant to help pay for her daughter's life skills education, but did not provide any documentary evidence of applying for, or receiving, the government grant.

I find on the balance of probabilities that the Landlord did not use the rental unit for the purpose she claimed when she issued the Tenants the Notice to End Tenancy. Therefore, the Tenants are entitled to compensation in the equivalent of two month's rent, pursuant to the provisions of Section 51(2) of the Act.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenants a Monetary Order in the amount of \$1,450.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order 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 Residential Tenancy Act.

Dated: June 8, 2010