



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords claimed that the Tenant's hearing package was originally served to them at an incorrect address but they admitted that they received it. In the circumstances, I find pursuant to s. 71(2)(b) that the Landlords were sufficiently served for the purposes of the with the Tenants' hearing package.

### Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

### Background and Evidence

This tenancy started on December 1, 2007 and ended on February 22, 2010 when the Tenants moved out. Rent was \$1,050.00 per month.

On December 31, 2010, the Landlords served the Tenants in person with a 2 Month Notice to End Tenancy for Landlords' Use of Property dated December 31, 2010. The ground checked off on the Notice was that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The Landlords admit that they intended that the mother and brother of the Landlord (J.R.) would occupy the rental unit, however, due to circumstances beyond their control that did not occur. For the period March 15 – April 21, 2010, the brother of J.R. occupied the rental property to make repairs and the property was listed for sale on or about April 9, 2010. The Landlords also admit that to date the property has not been sold and has been vacant. The Landlords said they did not offer to re-rent the property to the Tenants because they believed the Tenants purchased another residence shortly after the tenancy ended.

## Analysis

Section 51(2)(b) of the Act says that if a rental unit is not used for the purpose stated on the 2 Month Notice to End Tenancy for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement.

Section 49 of the Act defines a **close family member** as “an individual’s father, mother spouse or child or the father, mother or child of that individual’s spouse.”

I find that the Landlords did not use the rental unit for the purpose stated on the 2 Month Notice to End Tenancy dated December 31, 2010 for a six month period following the effective date of the Notice. Although J.R.’s brother occupied the rental unit for 6 weeks during this time, he is not a close family member as defined by the Act. Consequently, I find that a close family member has not occupied the rental unit since the effective date of the 2 Month Notice (March 1, 2010). Although the 6 month period referred to in s. 51 of the Act expires on August 31, 2010, the Landlords admitted that they have no intention of moving themselves or a close family member into the rental unit and are waiting for it to sell.

Although the Landlords argued that they could not use the rental unit for the purpose stated on the 2 Month Notice due to circumstances beyond their control, s. 51 the Act does not make exceptions for those kinds of circumstances. Similarly, it is irrelevant that the Tenants subsequently purchased a property as it was not they who ended the tenancy. Consequently, I find that the Tenants are entitled to compensation equivalent to 2 months rent or \$2,100.00. As the Tenants have been successful in this matter, I also find that they are entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Landlords.

## Conclusion

A monetary order in the amount of **\$2,150.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 16, 2010.

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Dispute Resolution Officer