



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is located on the main floor of a residence in which the landlord occupied an upper floor. The parties agreed that on or about June 29, 2009 the landlord advised the tenants via email that she would be moving into the rental unit on September 1. The tenants vacated the rental unit on or about September 30, 2010.

The tenants testified that it is their understanding that a new tenant has moved into the rental unit, that the rental unit is filled with his furniture and that the living arrangements are substantially similar to the arrangements they had with the landlord when they lived in the unit. The parties agreed that during the tenancy the landlord would occasionally access the suite in order to access the backyard and laundry and change the thermostat.

The landlord acknowledged that a tenant had moved into the rental unit, but testified that she herself is now occupying a bedroom in the rental unit and that she and her tenant share common areas such as the living room and kitchen. The landlord provided

a signed statement from her tenant in which he stated that he shared the living area on both the main and upper floor.

### Analysis

The tenants claim compensation under section 51 of the Act which provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

51(2) In addition to the amount payable under subsection (1), if

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

While the tenants were not served with a proper notice to end tenancy as is required under the Act, I find that the emailed direction of June 29 carried the same weight as a notice to end tenancy on the proper form.

In order to prove their claim, the tenants must prove that the landlord failed to use the rental unit for the stated purpose for at least 6 months after the effective date of the notice. The Act does not prohibit the landlord from sharing the rental unit with another tenant; it just requires the landlord to occupy the unit.

I find that the tenants have failed to prove their claim on the balance of probabilities. I find that it is more likely than not that the landlord is now occupying at least one room of the rental unit and is likely sharing common areas with the new tenant.

Conclusion

For the reasons given above the tenants' claim is dismissed.

Dated: October 14, 2010

---

Dispute Resolution Officer