



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 17, 2012. I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?

### Background and Evidence

This tenancy started on May 1, 2010 as a month to month tenancy. Rent was \$700.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 on April 16, 2010. The Landlord said the Tenant moved out of the rental unit on March 6, 2012 as a result of receiving a 2 Month to End Tenancy dated February 18, 2012.

The Landlord said they gave the Tenant a 2 Month Notice to End Tenancy in order for their daughter to move into the rental unit. The Landlord said they gave the Notices to End Tenancy for both the tenants in the rental complex to the tenant in the upper unit by personal delivery on February 18, 2012. The Tenant confirmed receiving the Notice to End Tenancy on February 20, 2012. The reason on the 2 Month Notice to End Tenancy was that a family member was going to occupy the rental unit.

The Landlord continued to say their daughter changed her mind about moving into the rental unit as she got a new job in Alberta and she decided to stay where she was. The Landlord's daughter was called as a Witness and she confirmed that she was going to move into the rental unit but did not as she decided to stay in Alberta. The Witness T.T.

continued to say that she did sign a tenancy agreement with her parents dated March 16, 2012, but she did not move into the rental unit. The Witness T.T said that she has sublet the unit to new tenants. The Witness T.T said a property management company found the new tenants and the tenants pay the rent directly to her parents. The Witness T.T. said she does not have anything to do with the tenancy except for the paper work.

The Landlord confirmed they hired a property management firm to find new tenants after they found out their daughter was not going to move into the rental unit in the middle of March, 2012. The Witness T.T. said she was recruited for her new job around March 15, 2012 and she started her new job April 2, 2012. The Landlord said the new tenants in the unit pay the rent directly to them not their daughter (the Witness) and they manage the rental of the property. The Witness T.T. said she is not involved in the rental of the property because she lives in Alberta.

The Tenant said the Landlord moved her and the upper tenant out of the house because the Landlord wanted to increase the rent. The Tenant continued to say the Landlord did this because the Landlords were having financial issues. The Tenant she believes this was the only reason that the Landlord had for issuing the Notice to End Tenancy.

### Analysis

Section 51 (2) of the Act says that if a Tenant receives a 2 Month Notice to End Tenancy and the Landlord does not accomplish the stated purpose for ending the tenancy in a reasonable time period then the tenant **must** be compensated the equivalent of double the monthly rent payable under the tenancy.

The stated reason on the 2 Month Notice to End Tenancy dated February 18, 2012 is for a member of the Landlords' family to **occupy** the rental unit. It is the Landlords' responsibility to confirm the details of the purpose/reason on the 2 Month Notice to End Tenancy prior to issuing the notice and if the purpose/reason of the Notice to End Tenancy is not completed then the Landlord is responsible to pay the tenant an amount equivalent to two month's rent.

In this situation I accept the Tenant's testimony that the Landlords have not completed the purpose/reason given for issuing the 2 Month Notice to End Tenancy, because the rental unit is not occupied by a member of the Landlords' family. I have taken into account that the Landlords have a tenancy agreement with their daughter and she has sublet the rental unit to other non family tenants, but the Act is clear that a **family member, as defined by the Act, must occupy the rental unit if that is the reason given for issuing a 2 Month Notice to End Tenancy**. Consequently, the Tenant has established grounds to support her application and pursuant to section 51 (2) I award double the monthly rent of \$700.00 in the amount of  $2 \times \$700.00 = \$1,400.00$  to the Tenant.

As the Tenant has been successful in this matter, the Tenant is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the following:

Compensation for loss	\$ 1,400.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,450.00
Balance Owing	\$ 1,450.00

### Conclusion

A Monetary Order in the amount of \$1,450.00 has been issued to the Tenant. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch