



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was held in response to an application filed by the tenants who are seeking a monetary order for compensation for damage or loss and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

### Issue(s) to be Decided

Are the tenants entitled to the compensation sought?

### Background and Evidence

This tenancy began in May 2011. On June 30, 2012 the landlord served a 2 month Notice to End Tenancy for Landlord's Use of Property. In that Notice the landlords indicated 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 tenants subsequently gave 10 days notice to end the tenancy and received 1 months' rent ion compensation as required with a Notice under section 49 is served.

The tenants say that a close family member did not move in and the house was subsequently demolished and a new home is being built on the property.

The landlord does not deny the tenants' claims. However the landlord says that when the Notice was issued it was their intention for the landlord's son to move into the rental unit. The landlord says the son decided he did not wish to move in and the landlord's other relatives did not wish to move in. The landlord came to the conclusion that the home was not suitable for their needs and they therefore obtained a permit to demolish

it and rebuild. The landlord says she fully intended to have her son move into the rental unit when she issued the Notice and if she had actually intended to demolish and rebuild she would have issued a Notice of rotate purpose in any event.

### Analysis

At Section 51 the Residential Tenancy Act says:

**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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

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

(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

(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.

The evidence is clear, the landlord issued a Notice to End Tenancy stating that a close family member was moving in but a close family member did not move in. Instead, the house was demolished and a new home is being built.

With respect to the landlord's submission that she could have ended the tenancy in order to rebuild, had she chosen this route the landlord could not have ended the

tenancy until she had all necessary permits and approvals required by law to convert the rental unit to non-residential use. In any event, she did not choose to go that route. She chose to end the tenancy so a close family member to move in and a close family member did not move in.

The tenants are therefore entitled to a monetary order in the amount of \$3,000.00 which is the equivalent of double the monthly rent payable under the tenancy agreement.

As the tenants have been successful in their claim they are also entitled to recover the \$50.00 filing fee paid for this application.

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. This is a final and binding Order as any Order of the Provincial 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*.

Dated: March 04, 2013

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Residential Tenancy Branch

