



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

The applicants are the former tenants of the rental unit. The tenancy was ended as the result of a two month Notice to End Tenancy for landlord use of property. The tenants apply for the statutory compensation or penalty imposed by s. 51(2)(b) of the *Residential Tenancy Act* (the “RTA”). That subsection provides that if the rental unit is not used for the purpose stated in the Notice for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant the equivalent of two months’ rent.

In this case the Notice claimed that the landlord or a close family member of the landlord intended in good faith to occupy the rental unit. Such a ground is listed as one of the permissible grounds for a landlord to end a tenancy under s. 49 of the *RTA*..

All parties were represented at the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord or a close family member has failed to occupy the premises for the requisite six months within a reasonable time after the effective date of the Notice?

### Background and Evidence

The rental unit is a two bedroom suite in a house. The tenancy started December 7, 2012. As a result of the Notice, the tenancy ended February 28, 2015. The rent had been \$1600.00 per month. The security deposit has been settled between the parties.

The tenant Ms.----. testifies that she attended back at the premises on May 26, June 29 and August 26.

She says the grass was overgrown. The yard sheds were open, as a disincentive to theft.

She says that on June 29 no garbage had been taken out though it was garbage day. The windows were closed; the blinds and curtains drawn. It appeared to her that the whole premises were vacant.

At each attendance she knocked on the door but no one answered.

She knows that the landlord had moved some furniture into the home.

Mr.---. for the landlord testifies and translates Ms. ----.'s evidence to the effect that in early March the landlords' nineteen year old son moved in.

She says that the landlords were in China from early June to September 3 but that on May 26, her son was there. She doesn't know why he didn't answer the door.

She says the landlords have not re-rented the premises.

She produces BC Hydro and gas bills showing them to be in the landlord's name for the relevant period. She produces a photo of the furnished living room to show that the landlords move in.

In response to the tenant Ms. ----- assertion that the landlords were still living in a nearby city, Ms. ----- admitted that the landlords eat at a relative's home in the nearby city.

### Analysis

On a consideration of the evidence given and referred to during the hearing, I find that it is equally consistent with the landlords having taken up residence in the premises as with them not having taken up residence. On this basis the tenants have failed to establish their claim on a balance of probabilities and it must be dismissed.

On a second basis, the tenants' claim cannot succeed.

Even had the landlords not taken up residence, all the evidence points to the fact that they retained possession of it to the exclusion of others. They did not rent it out to another tenant or dispose of the property.

The *RTA* requires that a landlord "occupy" the premises for a period of six months within a reasonable time after the effective date of the Notice.

According to Black's Law Dictionary (6<sup>th</sup> ed) the word "occupy" means "to take or enter upon possession of; to hold possession of; to hold or keep for use." The noun "occupation" is defined as "possession; control; tenure; use. The act or process by which real property is possessed and enjoyed. Where a person exercises physical control over land."

To occupy a property in the legal sense one need only have the right to possess it to the exclusion of others. One may "occupy" a property without "residing" there.

Residential Tenancy Policy Guideline 2 "Good Faith Requirement When Ending a Tenancy" is a guideline directed to considerations when determining whether or not a landlord who has given a Notice to End Tenancy for landlord use of property (or for other similar reasons) that has been challenged by a tenant has a good faith intention to carry out the stated reason for the Notice. The Guideline states that the *RTA* allows a landlord to end a tenancy if the landlord intends in good faith to "move in themselves, or allow a close family member to move into the unit."

I do not take this to be a policy determination that for a landlord to "occupy" the rental unit under s. 49 he or she (or a close family member) must "move in." In almost all cases, the Notice to End Tenancy for landlord use of property will be given because the landlord does intend to move in and reside in the rental unit. It is this generalized situation that the "plain language" text of the Guideline was intended to capture. The phrase is contained in a general preface leading up to the substance the Guideline is

intended to address. In my view it was not meant to be a directive of a policy that word “occupy” in s. 49 of the *RTA* will be interpreted to mean “reside.”

Of equal importance, the *RTA* uses the word “reside” elsewhere in the statute. In s. 88, dealing with service, the *RTA* requires that service by mail be to the address at which the person “resides” or by serving a tenant by leaving a copy at the tenant's residence with an adult who apparently “resides” with the tenant.

I conclude that the drafters of the legislation were aware of the difference in meaning between the word “occupy” and the word “reside” and that by using the word “occupy” in s. 51(2)(b), they did not intend to mean that the landlord or a close family member must also “reside” in the rental unit for the required six months. If it were otherwise, the drafters would have used the word “reside.”

### Conclusion

The former tenants' application must be dismissed.

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: January 24, 2016

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Residential Tenancy Branch

