



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC and FF

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The female Tenant stated that on June 15, 2017 the Application for Dispute Resolution, the Notice of Hearing, and six pages of evidence submitted with the Application were served to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 02, 2017 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on November 01, 2017. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 08, 2017 the Tenants submitted 6 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, although she could not recall the date of service. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 0, 2017 the Tenants submitted a USB device to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, on November 01, 2017. The Landlord stated that she did not receive this evidence.

The Tenants were advised that although I accept the USB device was properly served to the Landlord I find it possible that she did not receive this evidence, possibly as a result of an error by Canada Post. The Tenants were given the opportunity to request an adjournment for the purposes of re-serving this evidence, which they declined.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

### Issue(s) to be Decided

Are the Tenants' entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on May 01, 2005;
- the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that the Tenants must vacate the rental unit by January 31, 2017;
- the Notice to End Tenancy declared that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit; and
- on December 26, 2016 the Tenants gave the Landlord notice that they intended to vacate the rental unit by January 05, 2017; and
- the keys to the rental unit were returned on January 06, 2017.

The Tenants contend that the Landlord has not used the rental unit for the purpose stated on the Notice to End Tenancy.

The female Tenant stated that she still lives near the rental unit; that she could see in the windows until June of 2017; that she did not observe anyone living in the rental unit; that she looked through the window and she did not see any furniture in the rental unit prior to June of 2017; that she saw one of the bedrooms had been painted; the curtains

were drawn in June of 2017 so she could no longer see into the rental unit; and she does not believe that the Landlord will move into this house because the Landlord's current home is larger and nicer than the rental unit.

The Landlord stated that in January of 2017 the Landlord started moving some furniture into the rental unit; that the Landlord intends to move from her current residence in the same community into this home; that her daughter intends to move to the community and reside in the house the Landlord is currently occupying; that a health issue has delayed the daughter's plan to move to the community; and that she still intends on moving into the unit once her daughter moves to the community.

The Landlord submitted a letter from an individual who occupies a building beside the rental unit, dated October 30, 2017. The signatory to the letter declared that he has seen the Landlord and her husband on the property and inside the house on numerous occasions between January and October of 2017.

The female Tenant argued that the aforementioned letter is hearsay; that she knows the individual who allegedly wrote the letter; and that it could have been written by anyone.

### Analysis

On the basis of the undisputed evidence I find that the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Residential Tenant Act (Act)*, which required them to vacate the rental unit by January 31, 2017.

On the basis of the undisputed evidence I find that the Two Month Notice to End Tenancy declared that the rental unit will be occupied by the landlord or the landlord's close family member. I specifically note that the Notice declares the rental unit will be occupied by the Landlord and that it does not declare that the Landlord will be residing in the rental unit. In my view a rental unit is occupied by the Landlord providing they are using it for a personal purpose, even if that purpose is simply to store personal property.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation on the basis of that fact, not on the person who is denying the fact. In these circumstances, the burden of proof rests with the Tenants and I find that the Tenants have submitted insufficient evidence to establish that the Landlord is not currently occupying the rental unit.

In determining that there is insufficient evidence to establish that the Landlord is not

currently occupying the rental unit I was influenced, in part, by the Landlord's testimony that they began moving property into the rental unit in January of 2017. While I accept the female Tenant's testimony that she looked in the windows and did not see any of the personal property, I find it possible that the property was placed in a location that was not visible from the exterior of the unit.

In determining that there is insufficient evidence to establish that the Landlord is not currently occupying the rental unit I was influenced, in part, by the female Tenant's testimony that one of the rooms in the unit has been painted and that curtains have been installed. I find that this testimony serves to corroborate the Landlord's testimony that she is preparing to move into the unit.

In determining that there is insufficient evidence to establish that the Landlord is not currently occupying the rental unit I was influenced, in part, by the letter from a third party who is occupying a neighbouring building, who declared he has seen the Landlord and her husband on the property and inside the house on numerous occasions between January and October of 2017. I find that this testimony serves to corroborate the Landlord's testimony that she is preparing to move into the unit.

In the absence of any evidence that suggest the aforementioned letter is fraudulent, I have placed no weight on the Tenants' submission that the letter could have been written by anyone. The female Tenant stated that she knows this individual and I find that she had the opportunity to speak with this individual if she questioned the validity of the letter.

I have placed no weight on the Tenants' submission that the aforementioned letter was hearsay, as the letter cannot be considered hearsay evidence. Hearsay evidence is evidence in which a witness repeats words the witness overheard or was told by a third party.

In determining that there is insufficient evidence to establish that the Landlord is not currently occupying the rental unit I was influenced, in part, by the absence of any evidence that shows the Landlord is attempting to re-rent or sell the unit. In the absence of evidence that shows the Landlord is attempting to re-rent or sell the unit, I find it reasonable to conclude that the Landlord is occupying the unit for her own purposes.

In adjudicating this matter I have placed no weight on the female Tenant's testimony that she does not believe that the Landlord will move into this house because the

Landlord's current home is larger and nicer than the rental unit. I find this opinion has no evidentiary value as the Tenant cannot presume to understand the life circumstances of the Landlord.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As I have found that the Tenants have failed to establish that the Landlord is not currently occupying the rental unit, I dismiss the Tenants' application for compensation pursuant to section 51(2)(a) of the *Act*.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the cost of filing this Application.

### Conclusion

The Application for Dispute Resolution is 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: November 23, 2017

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Residential Tenancy Branch