



# 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 convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on April 12, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the *Act*?

### Background and Evidence

The Tenant stated that monthly rent was \$1,297.00 per month at the time the tenancy ended at the end of November 2016. The Tenant stated he was served a 2-Month Notice to End Tenancy (the Notice) on September 5, 2016. On page 2 of the Notice, the Landlord selected the following ground as the basis for the Notice:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Subsequently, the Tenant stated that he moved out of the rental unit at the end of November 2016. The Tenant stated in the hearing that he believes the Landlord issued the Notice because he wanted to sell the house, not because he wanted his wife's daughter to move in. As a result, the Tenant stated that the Landlord was not honest when he issued the Notice. The Tenant pointed to an email from the Landlord in August of 2016, where he alleges that the Landlord indicated that he was planning on selling the house. The Tenant pointed to section 49 of the Act, and stated that he should be entitled to two months' worth of compensation because the Landlord had an ulterior motive, and actually wanted to sell the house, not let a family member occupy it.

The Landlord stated that his relationship with the Tenant soured towards the end of the tenancy, and he is surprised at what the Tenant is applying for in this hearing. The Landlord stated that he had been exploring options to sell the house for quite some time, and it was always a potential over the years. The Landlord stated that his step-daughter works part time on Thetis Island, and did not get enough hours at her job to warrant her staying and living over there. Given this, the Landlord stated that it was more appropriate for his step-daughter to move to this house in Chemainus (the subject property), where it was less isolated. As a result, the Landlord stated that he issued the Notice to the Tenant because his step-daughter needed a place to live. The Landlord stated that it was not his intention to sell the property at that time, and he wanted to put a roof over his step-daughter's head while she figured out her next steps in life.

The Landlord stated that his step-daughter moved into the rental unit on December 1, 2016, and began living there full time. The Landlord stated that she had all the utility bills in her name from this point, until the following November (2017). The Landlord provided copies of these utility bills for the material period. The Landlord also stated that his step-daughter worked on the house while she was living there, as some things needed fixing, then she decided to go on vacation in March of 2017. The Landlord stated that his step-daughter left all belongings (clothes, furniture etc) at the house because she was still using that as her home base while she went on a trip. The Landlord stated that his step-daughter kept all of her belongings in the rental unit until August of 2017. The Landlord stated that at this point, they decided to sell the house, as neither of his step-children needed to live there anymore. The Landlord stated he ended up selling the house in the late summer/early fall of 2017.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Tenant is seeking two month's rent in compensation (2 x \$1,297.00) because he feels the Landlord had an ulterior motive when he issued the Notice, and because he feels the Landlord always intended to sell the house, not have his step-daughter move in.

First, I turn to the following portion of the Act which outlines what the Tenant would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

**Tenant's compensation: section 49 notice**

- 51** (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.

In this case, the Landlord issued the Notice on September 5, 2016, because his step-daughter (wife's daughter) was going to move in. The Landlord acknowledged that selling the house was always a potential, and that he had discussed selling it in the past, but he stated that his genuine intention when he issued the Notice was to provide his step-daughter a place to live. I find the evidence before me sufficiently establishes that the Landlord's step-daughter occupied the rental unit. I acknowledge that the Tenant pointed to an email from the Landlord with respect to the possibility that the house would be sold. However, the Landlord stated that plans were evolving during this time and it turned out that his step-daughter needed a place to live, so he issued the Notice. As per the Notice provided into evidence, the Landlord clearly lists the reason is as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

I acknowledge that the Tenant stated that the Landlord's step-daughter did not live there for at least 6 months, which entitles him to compensation, as per section 51(2) of the Act. However, I note that the documentary evidence and testimony establishes that the Landlord's step-daughter moved into the unit on December 1, 2016, and did not move her belongings out until around August 2017, which is well over 6 months. During this time, the Landlord's step-daughter paid all of the utilities, lived there for a large portion of the time, and kept all of her belongings there. Even though the Landlord's step-daughter went away on a trip during this period of time, I find the evidence before me sufficiently demonstrates that the Landlord's step-daughter occupied the rental unit for at least 6 months, given her belongings were still there, and she continued to pay the utility bills, which were under her name.

Ultimately, I find the Landlord has used the rental unit for the stated purpose (as laid out on the Notice) for at least 6 months. As such, I dismiss the Tenant's application on this matter. As the Tenant was not successful in his application, I decline to award him recovery of the filing fee he paid to make this application.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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: April 12, 2018

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Residential Tenancy Branch