



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 608821 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's two agents, "landlord WW" and "landlord WL," and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord WW confirmed that he had authority to speak on behalf of landlord WL, who is the owner of the rental unit, as well as the landlord company named in this application, as an agent at this hearing (collectively "landlord").

Landlord WW confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

The tenants confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 24, 2017 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 2 Month Notice.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2010 with a former landlord and ended on July 31, 2017 with the current landlord. Monthly rent of \$1,156.25 was payable on the first day of each month. A security deposit was paid by the tenants and the current landlord returned the full deposit to the tenants. No written tenancy agreement was signed with the former landlord and no new agreement was signed with the current landlord. The current landlord purchased the rental unit sometime in July 2016.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,156.25, totaling \$2,312.50, plus the \$100.00 application filing fee. The tenants claim that because the landlord did not use the rental unit for the purposes on the 2 Month Notice, they are entitled to compensation. The landlord disputes the tenants' application.

Both parties agreed that they attended a previous hearing at the Residential Tenancy Branch ("RTB") where an order of possession was issued against the tenants pursuant to the 2 Month Notice. A different Arbitrator conducted that hearing on June 6, 2017 and issued a decision of the same date. The file number for that hearing appears on the front page of this decision. Both parties agreed that at the previous hearing, the landlord agreed that the tenants could vacate on July, 31, 2017. In her decision, the previous Arbitrator noted that the landlord wanted to move into the rental unit and found that that landlord issued the notice for that purpose.

Both parties agreed that the tenants vacated the rental unit and received one month free rent pursuant to the 2 Month Notice. A copy of the 2 Month Notice was not

provided for this hearing but both parties agreed regarding the dates and reason on the notice. The effective move-out date on the 2 Month Notice was June 30, 2017. The reason indicated on the notice was:

- *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);*

Landlord WW stated that landlord WL, the owner, moved into the rental unit in the first couple of weeks of August 2017 and then moved out around the beginning of October 2017. He said that landlord WL did not realize how many issues there were with the rental unit when she moved in and that extensive renovations had to be done because of water leaks, mold and rot. Landlord WL provided a letter to this effect with the landlord's application. Landlord WW said that the renovations have been ongoing from October 2017 until present. He maintained that the previous decision referenced two units, where landlord WL planned to move with her children into one unit and the other unit would be occupied by her parents. He clarified that the tenant's rental unit was to be used by landlord WL, not her parents.

The tenants claimed that landlord WL never moved into the rental unit, according to other neighbours in the area. They claimed that landlord WL knew of all of the renovations that were to be done to the rental unit before she moved in.

### Analysis

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

- 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.*

The tenants vacated the rental unit on July 31, 2017, pursuant to the 2 Month Notice, which was issued by the landlord for landlord WL to move into the unit. Landlord WL moved in to the unit for approximately two months and then moved out to complete renovations. At the hearing, landlord WW agreed that the landlord did not issue the 2 Month Notice for renovations or repairs to be done to the rental unit.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as she did not occupy the rental unit for at least six months after the tenants vacated on July 31, 2017.

Accordingly, I find that the tenants are entitled to double the monthly rent of \$1,156.25 as compensation under section 51 of the *Act*, which totals \$2,312.50.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$2,412.50, against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 12, 2018

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Residential Tenancy Branch