



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

FFT MNDCT

### Introduction

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

- a monetary order for compensation under the *Act* pursuant to sections 51 and 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlords acknowledged receipt of the tenants' Notice of Hearing and Application for Dispute Resolution and both parties acknowledged receipt of one another's evidence. Neither party raised issues of service. I find that the parties were served in accordance with the *Act*.

The tenants acknowledged receipt of the landlords' Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") on July 31, 2018. I find that the tenants were served the Two Month Notice in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the *Act* pursuant to sections 51 and 67?

Are the tenants entitled to recover their filing fee for this application from the landlords pursuant to section 72?

### Background and Evidence

The tenants testified that the tenancy began on April 1, 2016 with a monthly rent of \$1,250.00. A copy of the tenancy agreement was submitted as evidence.

The parties agreed that the rental unit consisted of a portion of the landlords' detached house. In addition, the parties agreed that the landlords also had another tenant residing in the house in a separate rental unit.

The landlords served the Two Month Notice on July 31, 2018 with a move out date of October 1, 2018. The Two Month Notice stated that the reason for ending the tenancy was that the landlords, or the landlords' close family, intended to move into the rental unit. The tenants testified that the landlords said that they needed possession of the house because the landlords' parents were moving to Canada. The tenants testified that the landlords also issued a notice to end tenancy to the other tenants in the property.

The tenants testified that they moved out of the rental unit on August 17, 2018. The landlords testified that they refunded the tenants their security deposit and excess rent payment on August 20, 2018.

The tenants testified they discovered that the landlords were operating a short-term guest accommodation in the rental unit in November 2018. The tenants submitted photographs which showed the rental unit listed on a short-term guest accommodation website in November 2018. The tenants testified that the listing disappeared from the website after the tenants filed this application for dispute resolution.

The landlords testified that they had intended to move into the rental unit on October 1, 2018 when they issued the Two Month Notice. The landlords testified that, at the time the notice was issued, they lived in a house in Coquitlam owned by one of the landlords' parents. The landlords testified that their parents had retired and had decided to move from Taiwan to their Coquitlam house. The landlords testified that they needed to move out of the Coquitlam house to make room for their parents to move in.

The landlords testified that their plans changed when one of the landlords' father passed away on August 16, 2018 in Taiwan after the Two Month Notice was issued. The landlords provided a translated death certificate. The landlords testified that they needed to take care of their parents' affairs in Taiwan after their father's death. The landlords also testified that they needed to go back and forth between Taiwan and Canada to take care of these matters.

In addition, the landlords testified that their mother had decided to stay in Taiwan after her husband's death rather than move to the Coquitlam house. The landlords testified that, because their mother changed her mind about moving to Canada, the landlords' planned move to the rental unit became less urgent since they no longer needed to vacate the Coquitlam house.

The landlords testified that the move to the rental unit was also delayed because one of the landlords was pregnant. The landlords provided a copy of a medical report corroborating the pregnancy.

The landlords testified that they started moving furniture into the property in October 2018.

The landlords admitted to offering short-term guest accommodations for a period of one week in November 2018. The landlords testified that they had three guest stays during this time period.

The landlord testified that they moved into the rental unit on a full-time basis in the beginning of January, 2019. The landlords testified that they began sleeping at the rental unit at that time. In addition, the landlords provided copies of numerous documents, including driver's licenses, an internet bill, a bank statement, city recreation form, online shopping invoices, a food delivery invoice, and utility invoices which evidenced that landlords' address was the rental unit as of January 2019.

The landlords testified that they continue to reside at the property

### Analysis

The tenants are seeking compensation of \$15,000.00 under section 51 of the *Act*, which states in part, as follows:

51(2) ..., 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 ... **must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.***

[My emphasis added]

I find that the effective date of the Two Month Notice was October 1, 2018 and that the stated reason for the Two Month Notice was so that the landlords, or the landlords' close family, could move into the rental unit. Accordingly, the tenants can establish a claim for compensation under section 51(2) of the *Act* if the tenants can prove that either the landlords did not move into the property within a reasonable period of time after October 1, 2018 or the landlords did not reside at the property for six months starting within a reasonable period after October 1, 2018.

Based upon the landlords' and the tenants' testimony and evidence, I find that the landlords waited until early January 2019 before they occupied the property. While the landlords testified that they moved furniture into the property in October 2018, I am not satisfied that they occupied the property at that time. A person occupies a property when they reside there. The landlords

did not provide any evidence to establish that they resided in the property when they moved their furniture there in October 2018.

Further, the landlords admitted to using the property as a short-term rental in November 2018. As such, I find that the landlords did not occupy the rental unit in November 2018.

The landlords testified that they began sleeping at the rental unit at the beginning of January 2019. The landlords provided substantial documentary evidence that they have resided at the property since January 2019. The tenants did not provide any evidence to establish that the landlords did not start residing at the property at the beginning of January 2019. I find that landlords started occupying the rental unit early January 2019.

Accordingly, I find that there was a three month delay after the effective date of the Two Months Notice of October 1, 2018 before the landlords began occupying the rental unit in early January 2019. While a three month delay in occupying the property is a significant delay, I find that this is a reasonable period of time in these circumstances.

I find that landlords' explanation that their plans changed after their father's death to be credible. Further, I find was reasonable for the landlords to delay moving into the rental unit while taking care of their parents' affairs in Taiwan. I also find that it is reasonable to take time to move while one of the landlords is pregnant. In these circumstances, I find that the landlord did occupy the rental unit within a reasonable time by moving into the property by early January 2019.

While I do find that the landlords' intentions are somewhat suspicious since they operated a short-term guest accommodation service at the property in November 2018, I do not think it is necessarily unreasonable to earn short term rental income while the landlords are in the process of moving into to the rental property.

In addition, the landlords' intention is not a relevant factor in analyzing a tenants' application for compensation under section 51(2) of the *Act*. Section 51(2) simply requires a landlord to take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. I find that the landlords have done so.

In addition, I find that tenants have not produced any evidence to establish that the landlords have not resided at the property since early January 2019 and the applicant has the onus of proof to establish their claim pursuant to *Residential Tenancy Branch Rules of Procedure* section 6.6. Accordingly, I dismiss the tenants' application for compensation pursuant to section 51(2) of the *Act*.

In addition, since the tenants have not been successful in this matter, I dismiss the tenants' request for reimbursement of the filing fee.

Conclusion

I dismiss the tenants' application for compensation pursuant to section 51(2) of the *Act* without leave to reapply.

I dismiss the tenants' request for reimbursement of the filing fee 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: February 15, 2019

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Residential Tenancy Branch