



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, her lawyer and landlord P.A. (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord and the tenant agree that the tenant personally served the landlord with her application for dispute resolution on January 9, 2019. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

The tenant testified that she served landlord V.A. with her application for dispute resolution via registered mail on January 9, 2019. The tenant testified that she sent the package to the address listed as the landlord's address on her tenancy agreement. The Canada Post tracking number for this registered mailing was entered into evidence. I find that landlord V.A. was deemed served with the tenant's application for dispute resolution on January 14, 2019, five days after it's mailing, in accordance with section 89 and 90 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2016 and ended on October 18, 2018. Monthly rent in the amount of \$1,015.00 was payable on the first day of each month. A security deposit of \$487.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified he and landlord V.A. are amicably divorced and remain co-owners of the subject rental property. The landlords normally reside in Australia and use the subject rental property as a vacation property. The landlord testified that the agreement between himself and landlord V.A. was that the landlord who was using the subject rental property would pay rent to the other landlord if they were not also using it.

Both parties agreed to the following facts. The subject rental property is a single-family home with two bedrooms located upstairs and one bedroom located downstairs. Prior to the tenant moving in, a partition wall which separated the upstairs from the downstairs was removed.

The landlord testified to the following facts. The partition wall gave privacy between the two spaces and was originally erected when he and landlord V.A., were having relationship issues. The downstairs space has one bedroom, one bathroom, one living room and one kitchen. The upstairs space has two bedrooms, a bathroom and a den. A kitchenette was installed in the den when the partition wall was erected. A bathroom with laundry facilities is shared between the two spaces.

The tenant testified that her bedroom was in the lower section of the house and she had various room-mates over the years occupy the two upstairs bedrooms. The tenant testified that her room mates were not on the tenancy agreement and did not sign a

tenancy agreement with her. The tenant testified that she shared the downstairs kitchen with her room mates.

The landlord testified that on September 17<sup>th</sup> or 18<sup>th</sup>, 2018, a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2018 (the "Two Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the Two Month Notice on September 17, 2018.

The Two Month Notice stated the following reason for ending this tenancy:

- 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).

Both parties agree to the following facts. The landlord e-mailed the tenant on September 17, 2018 and informed the tenant that he and landlord V.A. wanted the house for their own use and that he and landlord V.A. would both be coming during the winter or parts thereof. The tenant responded on September 17, 2018 and asked the landlord if there was any possibility or opportunity that the landlord would split the house again and rent out one of the units. The landlord responded on September 18, 2018 via email and stated that he would be moving into the subject rental property once it was vacated and that landlord V.A. intended on spending part of the winter at the subject rental property, possibility to be joined by other family members. The above e-mails were entered into evidence.

Both parties agree that on October 3, 2018 the tenant e-mailed the landlord and informed him of her intent to move out of the subject rental property on October 18, 2018. The landlord responded to the tenant's October 3, 2018 email on October 4, 2018. The above e-mails were entered into evidence.

The landlord testified that in November of 2018 he re-installed the partition wall at the subject rental property and put the lower portion of the house up for rent and he moved into the upper portion of the house on November 13, 2018. New tenants moved into the lower portion of the subject rental property on December 1, 2018. A lock was installed on the door to the lower suite, preventing the landlord from gaining access to the lower space. The landlords and the new tenants did not share a kitchen. The tenants had access to the landlord's bathroom which housed the shared laundry facilities but also had their own bathroom that the landlord did not have access to. The landlord and the new tenants signed a fixed term tenancy agreement from December 2018 to either the

end of March or beginning of April 2019, whenever the local ski hill closed. The new rental rate was \$1,675.00 per month.

The landlord testified that at the time the tenant was served with the Two Month Notice he and landlord V.A. honestly intended on using the entire subject rental property for their own use; however, unexpected medical problems changed their plans. The landlord testified that landlord V.A. originally intended on using the subject rental property in February of 2019 and her sister was going to join her. Unfortunately, landlord V.A.'s niece was diagnosed with breast cancer and so landlord V.A.'s sister changed her plans and decided not to join landlord V.A. at the subject rental property.

The landlord testified that on November 1, 2018 landlord V.A. was diagnosed with a heart condition requiring surgery. Landlord V.A. did not know when she would have the surgery. The landlord entered into evidence a cardiac specialist referral dated November 1, 2018. The landlord testified that this made it very difficult to know when landlord V.A. would be able to come to the subject rental property. Given this uncertainty, the landlords decided to rent out a portion of the house as the landlord did not want to bear the entire cost of the subject rental property but still wanted to use the subject rental property for himself. The landlord testified that landlord V.A. ended up having surgery on April 2, 2019. A cardiac outpatient clinic report dated same was entered into evidence.

### Analysis

Section 49(3) of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline #50 states:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy.

I accept the tenant's testimony that she moved out of the subject rental property on October 18, 2018. I accept the landlord's testimony that he moved into the upper portion of the subject rental property on November 13, 2018. I find that the landlord moved into the upper portion of the subject rental property within a reasonable period of time after the tenant moved out. I find that the rental unit has been used for the stated purpose from November 13, 2018 to the present day.

The *Act* does not prohibit the landlord from changing the composition of the subject rental property. Section 51 of the *Act* only provides the remedy of 12 months' rent to the tenant if the landlord does not use the subject rental property for the purpose stated on the Two Month Notice or the rental unit is not used for that stated purpose for at least 6 months' duration. In this case, the tenant would only be entitled to the 12 months compensation if the landlord did not occupy the subject rental property within a reasonable period of time after the tenant moved out. The evidence is clear that the landlord has occupied the upper portion of the subject rental period since November 13, 2018. The fact that the landlord changed the composition of the subject rental property after the tenant moved out and rented out a portion of the subject rental property does not change the fact that the landlord complied with section 49 of the *Act* by moving into the subject rental property as stated on the Two Month Notice.

I therefore dismiss the tenant's application without leave to reapply.

As the tenant was not successful in her application I find that she is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

### Conclusion

The tenant's application is dismissed 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: May 1, 2019

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Residential Tenancy Branch