



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 18, 2019. Both parties confirmed the landlord personally served the tenants with the submitted documentary evidence in person on April 25, 2019. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenants confirmed that they were seeking monetary compensation under section 51 of the Act after receiving a notice to end tenancy under section 49 of the Act for \$19,800.00 and recovery of the \$100.00 filing fee.

At the end of the hearing, the tenants confirmed that they have moved from the last listed mailing address and have a new mailing address as confirmed by the landlords. The tenants provided the new mailing address and this file shall be updated to reflect that change for each.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

### Background and Evidence

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

This tenancy began on April 1, 2018 until September 30, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 17, 2018. The monthly rent was \$1,650.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$825.00 was paid on March 28, 2018. The tenancy ended as a result of the landlord serving the tenant with a 2 month notice to end tenancy for landlord's use dated July 30, 2018 and effective on September 30, 2018.

The tenants seek a monetary claim of \$19,800.00 which is equivalent to 12 months of monthly rent at \$1,650.00 per month. The tenants claim that on August 1, 2018 the tenants were served with a 2 month notice to end tenancy for landlord's use of property dated July 30, 2018. The stated notice provides for an effective end of tenancy of September 30, 2018. The landlords notified the tenants that the landlords' parents were moving in and that the landlords were reclaiming the suite for family use. The tenants stated that in December 2018 it came to their attention that the landlords' had posted the rental unit online for rent. The tenants seek compensation under section 51 of the Act equal to 12 months of rent payments as per the tenancy agreement because the rental unit was not used for that stated purpose for at least 6 months' duration.

The landlords have argued that they have and continue to use part of the rental for their own use. The landlords clarified that the 2 month notice was issued for the immediate use for their parents to reside in the rental unit on a short term basis. The landlords claim that it has always been their intent that upon the short term visit concluding the landlords would use the suite as their children grew, "they would need additional space". The landlord clarified that the rental unit was modified with an entire room used for storage and the remaining 1 bedroom suite portion was later rented. The landlord has provided undisputed testimony that their income (due to real estate market as the landlord is a residential realtor) "a very sudden and dramatic slow down in the residential real estate market that came on after the summer of 2018. Buyer confidence evaporated quickly, and Greater Vancouver saw a dramatic decrease in residential sales volumes and sudden benchmark price decreases. The effect of this had on me as an individual realtor is, all of a sudden my listings were not selling, and none of my Buyer clients wanted to buy anymore..." The landlords have stated that their earnings for January 1 to April 15 over the last two years have decreased over 70% for that period of time. The landlords provided undisputed testimony that they decided to re-rent part of the two bedroom suite as a 1 bedroom suite, using one bedroom as personal storage. The landlords have provided copies of an income statement for the periods January 1 to April 15 for the last two years, a copy the new tenancy agreement with an access agreement for the one bedroom.

The landlords have argued that the tenants have suffered no losses/damage as the landlords have given the tenants “a great reference” and were successful in obtaining a new tenancy. The tenants were provided with 1 months’ compensation at the end of tenancy.

The tenants argued that their understanding was that the primary reason for ending the tenancy was for the parents to move into the rental space. The landlords have disputed this referring to the text message evidence submitted (originally a text message from the landlord to the tenant dated July 30, 2018). It states in part, “primarily because Gemma’s parents are coming here from England, and we want them to stay in the suite. We also plan to convert the suite back into living space for the house. Now that the kids are getting older, they need a downstairs rec room.” The landlords also noted that the one bedroom suite is now rented at a rate lower than that with the tenants.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties have confirmed that the landlords served the tenants with a 2 month notice dated July 30, 2018 for landlord’s use. Both parties confirmed that the tenants vacated the rental unit by September 30, 2018 as per the effective date of the notice.

Section 51 (2) of the *Act* states in part that a tenant who receives a notice to end tenancy under section 49 (landlord’s use of property) is entitled to an amount equal to 12 times the monthly rent payable under the tenancy agreement if 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 the rental unit is not used for the stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.

The landlords’ have confirmed that “the suite” (a two bedroom unit) was used temporarily for their parents and later re-rented as a one bedroom unit with one bedroom being used as storage for the landlords’ purposes (furniture storage). The tenants provided undisputed evidence that part of the rental unit was re-rented in December 2018 as shown in the submitted copy of an online rental advertisement.

Section 51 (3) of the Act states that the landlord may be excused if, in the director's opinion, extenuating circumstances prevented the landlord from using the rental unit for that stated purpose for at least 6 months' duration.

In this case, I find that the landlords have from the beginning provided clear reasons as to issuance of the 2 month notice dated July 30, 2018 as shown in the submitted copies of text messages between the two parties. There was no dispute between the two parties that the landlord used the rental unit for a period of 4 month period. Although the landlords deviated from the original reason for the 2 month notice which was for landlord's use by renting out the suite as a 1 bedroom unit, I find in the circumstances that the landlords have provided extenuating circumstances of a financial hardship as explained above due to the landlords' employment income. This was confirmed in the income statements provided by the landlords which were not disputed by the tenants. On this basis, I excuse the landlords as they failed to use the rental unit for the stated purpose for atleast the 6 month duration.

#### Conclusion

The tenants' application 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: May 07, 2019

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Residential Tenancy Branch