



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the “*Act*”) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenants and the landlords attended the hearing. Both had an opportunity to provide affirmed testimony, call witnesses and submit documentary evidence. The landlords’ daughter and agent, NG, assisted the landlords and provided affirmed testimony.

The landlords acknowledged receipt of the Application for Dispute Resolution and the Notice of Hearing. The tenants acknowledged receipt of the landlords’ materials. I find each party served the other pursuant to the requirements of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to the following:

- A monetary order in an amount equivalent to double the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

### Background and Evidence

The tenants submitted documentary and video evidence as well as copies of texts. The landlords submitted written statements and documents.

While I have turned my mind to all the documentary evidence and the testimony presented, I do not reproduce all details of the submissions and arguments here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenants claimed that the landlords did not occupy the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) within a reasonable time after August 31, 2018 and accordingly, they were seeking twelve months' rent as compensation ( $\$930.00 \times 12 = \$11,160.00$ ) under the provisions of section 51(2). The tenants also request reimbursement of the filing fee of \$100.00.

The parties agreed the tenants began renting a basement apartment in a month-to-month tenancy in a house owned by the landlords. The tenancy began September 2011 and ended seven years later, on August 31, 2018; monthly rent of \$930.00 was payable on the first of the month. The tenants provided a security deposit of \$460.00 to the landlords at the beginning of the tenancy which was returned to the tenants when they vacated.

The parties agreed that the landlords served the tenants with a Two Month Notice dated and served on June 17, 2018 with an effective date of August 31, 2018. The reason for the Two Month Notice indicated on the form is:

*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 the individual's spouse).*

The tenants testified that they received a text from the landlords on June 14, 2019 stating that their daughter NG, a university student living in another area in the basement, would be moving in to the unit. The tenants testified they did not understand why the landlords' daughter would be occupying their unit as she lived in the basement as well in a separate unit. The landlords acknowledged sending the text but testified that their plans subsequently changed as to which family member would be occupying the unit.

After issuing the Two-Month Notice, the tenants testified that the landlords offered them the opportunity to move into the room occupied by their daughter NG; NG's room was about half the size of the unit and the proposed rent was the same as the rent the tenants were paying for the unit. The tenants declined.

The landlords testified that the mother of one of the landlord's ("the landlord's mother") was living in a converted garage on the property and that it became their intention that she would move in to the unit which was more comfortable and suitable for an elderly person. The daughter NG confirmed it was the landlords' intention to have her grandmother move in to the unit. It was not clear from the landlords' and the witness NG's testimony when the decision was made that the landlord's mother and not the landlord's daughter NB would occupy the unit.

During the hearing, the tenants expressed their surprise to hear that the landlords intended the landlord's mother to move in to the unit; they testified that she lived a comfortable converted apartment in what had once been a garage and they had always understood from conversations with the landlords that their daughter NG was moving in to the unit.

On August 31, 2018, the tenants vacated the unit pursuant to the Two Month Notice. The tenants acknowledged receipt of one month's rent as compensation pursuant to section 51(2)

The landlords testified that the landlord's mother, a permanent Canadian resident, had longstanding plans to return to Iran at the end of August 2018 coinciding with the vacancy date under the Two Month Notice. The purpose of the trip was for the landlord's mother to attend to personal matters and return "as soon as possible and live in the unit. The landlords testified the landlord's mother was expected to return "in a month".

However, the landlord's mother has never returned to Canada. The landlords testified that she was delayed and became ill; because of these unanticipated events, she has remained in Iran.

The landlord's mother did not have a return air ticket when she left Canada. In a written statement, the landlords stated as follows (reference to evidentiary documents removed; as written):

*In August 29 2018, my mother had to go back to Iran to work on financial issues, sell or rent her house, and do some emergency chores. Due to the fact that this work in Iran took longer than expected, in November she informed us could not come back soon. She also faced with some health issue which prevents her from travelling, so we decided to rent the unit again to prevent any financial loss and mortgage assistance.*

In support of the landlords' statements, the landlords submitted a translated letter dated March 11, 2019 addressed "To whom it may concern". The letter does not have a signed signature; there is a typed name of the landlord's mother at the foot of the letter. The letter stated in part as follows:

*... [the landlords] offered me to move to basement unit and I accepted, in September 2018 I had to go back to Iran to sell or rent my house and finish my husband will, unfortunately for some unpredicted problems and some emergency problems I had to stay longer and I informed them in November that I cannot come back anytime soon.*

The landlords also submitted a translated document titled "Medical Certificate" dated November 5, 2018 stating that the landlord's mother suffered from "repetitive Traumatic Discopathy" [as written] and was unable to travel for six months. The landlords stated that at the time of the hearing, seven months after the tenants vacated, there are no plans for the landlord's mother to return to occupy the unit. No explanation or further update on her health or plans were provided.

The landlords testified that because of this unexpected turn of events, they gave up on the landlord's mother returning as planned; they rented the unit to a new occupant, not a relative or close family member, beginning November 22, 2018 for rent of \$1,275.00 a month, an increase from the rent of \$930.00 paid by the tenants.

The tenants stated they went to the unit to get mail on December 4, 2018 and found a new occupant, unknown to them, in the unit. This was the first they learned that the landlords' close family member, that is, the landlords' daughter, had not moved in to the unit as set out in the Two Month Notice.

The female tenant testified to a conversation she had with the new occupant on December 26, 2018 in which she understood the new occupant to say he had been in the unit since October 2018 and had found the unit which had been posted on a website.

The tenants stated the unit was their first home since moving to Canada; their work, families and friends were in the vicinity. As they could not find a replacement apartment in the same geographical area, their work commutes were sharply increased leading to distressing consequences for them personally and professionally.

The tenants stated their belief that it was the landlord's intentions all along to evict them, so they could raise the rent. The landlords deny that and stated it was their intention to have a close family member, the landlord's mother, occupy the unit.

### Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

Section 49 provides in part as follows:

*49 (2) Subject to section 51 [...], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

*(a) not earlier than 2 months after the date the tenant receives the notice...*

*(3) 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.*

The tenants testified that they believed the landlords had "good faith" when they were served with the Two Month Notice and they intended to have their daughter NG occupy the unit. Hence, they accepted the Two Month Notice and vacated as requested.

Section 51 provides in part as follows (emphasis added):

*(2) 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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, there is no dispute the unit was vacant from the end of August 2018 until November 22, 2018, a period of almost three months; it was possibly occupied as early as October 2018, as the female tenant testified, six to eight weeks after they vacated.

The onus is on the tenants to establish their claim under section 51(2) that steps have not been taken, within a reasonable period after August 31, 2019, to accomplish the stated purpose for ending the tenancy, that is, to have a close family member move in to the unit, or that 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.

*Policy Guideline # 50, Compensation for Ending a Tenancy* provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

***Accomplishing the Purpose/Using the Rental Unit***

*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. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.*

*A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.*

Considering the evidence submitted by both parties, the Act and the Guideline, I find the tenants have presented enough evidence to meet the burden of proof on a balance of probabilities to establish their claim under section 51(2), that is, that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. This finding is based on the landlords' acknowledgement that no close family member of the landlords lived in the unit after the tenants vacated from August 31, 2019 to date.

The landlords argued there were "extenuating circumstances" pursuant to section 51(3) that prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy. That is, the landlords claimed the family member who was supposed to move in to the unit when the tenants vacated, the landlord's mother, was delayed for unexpected personal reasons in another country and could not return to Canada to occupy the unit as planned.

*Policy Guideline # 50, Compensation for Ending a Tenancy* provides guidance on defining extenuating circumstances. The Policy states as follows [emphasis added]:

#### ***E. EXTENUATING CIRCUMSTANCES***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- *A landlord ends a tenancy, so their parent can occupy the rental unit **and the parent dies** before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is **destroyed in a wildfire**.*
- ...

*The following are probably **not** extenuating circumstances:*

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*

- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

Considering all the evidence submitted, the *Act* and the Guidelines, I find the landlords have not met the burden of proof under section 51(3) that there were extenuating circumstances justifying the landlords' failure to comply with section 51(2).

I have carefully considered and weighed all the evidence provided by the landlords as well as their submissions. I find the landlords' evidence not to be credible. I find it perplexing that the landlord's mother left the country at the same time she was supposed to be occupying the unit. Taking these factors into account, I find it unlikely the landlord's mother intended to return as she had no return ticket, and, as acknowledged by the landlords, she has never returned. I do not find it credible that the landlord's mother intended to return in one month as the landlord testified and I do not accept this aspect of their evidence.

I find the landlords have benefited financially from the tenants vacating the premises, as the landlords acknowledged, as the unit was rented within 2-3 months at a substantially increased rent; this further casts doubt in my mind on their assertion that the unit was to be occupied by a close family member, and the increased rent to a new tenant was unanticipated and unplanned.

Considering all the evidence and the burden of proof on a balance of probabilities, I find that the landlords' Two Month Notice for intended occupation by a close family member to have been created solely for the purpose of getting the tenants to leave.

I therefore find the landlords have failed to establish extenuating circumstances pursuant to section 51(3).

As explained above, I find the tenants have established their claim under section 51(2). Accordingly, pursuant to the provisions of section 51(2), I award the tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, that is \$11,160.00 ( $\$930.00 \times 12 = \$11,160.00$ )

As the tenants were successful in their claim, I award the tenants reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the tenants a monetary order of **\$11,260.00** calculated as follows:



ITEM	AMOUNT
Section 51(2) one month rent x 12 (\$930.00 x 12 = \$11,160.00)	\$11,160.00
Reimbursement of filing fee	\$100.00
<b>TOTAL</b>	<b>\$11,260.00</b>

### Conclusion

I grant a monetary order in favour of the tenants in the amount of **\$11,260.00**.

The tenants are provided with a monetary order in the above terms and the landlords must be served with this order as soon as possible. Should the landlords 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: May 09, 2019

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Residential Tenancy Branch