



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 21, 2019 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with E.S. to assist. The Landlord provided her full legal name which is reflected in the style of cause. The Landlord called four witnesses during the hearing. The witnesses were only present when required.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenants sought \$20,640.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) for the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated October 19, 2018 (the “Notice”).

The parties agreed there was a written tenancy agreement in relation to this matter. The Landlord testified that it was between her and L.B. L.B. testified that R.C. was later added as a tenant. The Landlord testified that there was only one agreement done but did not dispute that R.C. was a tenant in relation to this matter.

The parties agreed the tenancy started in February of 2009 and rent was \$1,720.00 due on the first day of each month. The Landlord testified that this was a month-to-month tenancy. L.B. testified that it was a fixed term tenancy at the outset then became month-to-month.

Both parties agreed the Tenants were served with the Notice October 19, 2018.

The Notice is in evidence. It is dated October 19, 2018 and has an effective date of December 31, 2018. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord’s close family member.

L.B. testified as follows in relation to the Tenants’ claim. The Tenants feel the Landlord did not act in good faith when she served the Notice. The Landlord told them she had been served her own eviction notice and had to move into the rental unit right away. The Landlord said she needed an urgent place to stay. At the time the Application was filed, the Tenants did not see any evidence that the Landlord was living at the rental unit. There was no garbage put out for weekly garbage pick ups in May or June.

L.B. referred to a letter submitted by a neighbour dated April 25, 2019. This is actually an unsigned email. The writer states as follows. They are the neighbour to the rental unit. They believe nobody occupies or lives in the rental unit. They witnessed and heard renovations being done in January of 2019. They have not witnessed any comings and goings from the rental unit since. They have never seen any waste or recycling put out. They have witnessed people ringing the doorbell with no answer. They have rung the doorbell with no answer. The lights are not on and the blinds are closed. Flyers have been left for days without moving.

L.B. testified that the walls in the rental unit are thin and the neighbour would have heard noise if there had been noise in the rental unit.

L.B. submitted that the Landlord's evidence package is just the thoughts and opinions of the Landlord. She testified that there are never lights on in the rental unit. She pointed out that the electricity usage has declined since January as shown in the Landlord's evidence. L.B. submitted that nobody lives in the rental unit. She testified that she has never seen the Landlord's husband at the rental unit and thought the Landlord was no longer with her husband. L.B. pointed out that the Landlord was looking into changing the insurance for the property in August but asked for further rent cheques in September.

R.C. testified about the Landlord telling the Tenants she needed the rental unit urgently. He questioned the Landlord's credibility in serving the Notice.

Both Tenants submitted that the Landlord did not require the rental unit urgently.

The Tenants submitted photos showing no garbage or recycling left outside the rental unit.

The Landlord testified as follows. She was given an eviction notice in October but had been thinking about moving back into the rental unit for a year or two. She left her rental at the end of October and moved in with her brother.

E.S. submitted as follows on behalf of the Landlord. The Notice was issued on the ground that the rental unit would be occupied by the Landlord or close family member and that is still true. It has always been the Landlord's intention to occupy the rental unit. Steps were taken to accomplish this, but the process took longer than expected. The Landlord moved into the rental unit in May.

The Landlord testified that she did renovate the rental unit after the Tenants vacated. She testified that the renovations included painting, installing new floors, putting new carpet on the stairs, replacing the baseboards and molding as well as installing a new washer and dryer. The Landlord testified that the painting and flooring took a long time. She said the furniture for the rental unit also took a long time. She testified that her husband spent nights at the rental unit sporadically in February and March to do work on the rental unit. She said her husband was there at least once or twice a week. The Landlord testified that she started moving her belongings into the rental unit February 10, 2019 and pointed to a receipt from movers submitted in evidence which

she said shows items were moved from her storage unit to the rental unit. She confirmed that the belongings remained at the rental unit.

The Landlord called witness E.T., her accountant. E.T. testified as follows. The Landlord contacted her about the rental unit in 2018. The Landlord told her she was going to convert the rental unit to her principal residence and asked if there were tax consequences for doing so. The Landlord was planning to move into the rental unit. The Tenants had no questions for E.T.

The Landlord called witness A.N., her insurance broker. A.N. testified as follows. The Landlord contacted her in January of 2019 about changing her insurance to change the rental unit to the Landlord's principle residence. She did change the Landlord's insurance effective January 08, 2019. The Tenants had no questions for A.N.

The Landlord called witness S.S., her sister-in-law. S.S. testified as follows. She went with the Landlord to the rental unit a couple times a week and observed the renovations and the Landlord getting things together to move into the rental unit. The Landlord and her husband lived with S.S. at the time. She has no reason to believe the Landlord is going to re-rent the unit. The Tenants had no questions for S.S.

The Landlord called witness M.D., her husband. M.D. testified as follows. He and the Landlord intend to live in the rental unit. There was a list of items that had to be done first such as cleaning, patching cracks and holes in the walls, taking out the carpet and underlay, painting, installing blinds and screens and replacing electrical covers. This was an endless process. He did some of this work himself. He works and does overtime so sometimes does not get home until midnight. He parks his vehicle in the garage. He was at the rental unit two to three days per week and on weekends. One of the delays in moving into the rental unit related to having to get permission from strata to replace the flooring which took a month. The Tenants had no questions for M.D.

In reply, L.B. submitted that the Landlord said she moved furniture into the rental unit in February but that the video evidence submitted by the Landlord shows there is only a bed and rug and no other furniture in the rental unit.

L.B. further submitted that the renovations described are not major renovations. L.B. said the Landlord did not move into the rental unit within a reasonable time.

R.C. referred to the Tenants' evidence showing the Landlord has not been putting garbage or recycling out. He submitted that there would be garbage if someone was living at the rental unit.

The Landlord provided written submissions which state in part the following. The rental unit was being renovated from January to March. She tried to purchase furniture for the home in April but there were delays with the store. Her and her husband started to live in the rental unit in May.

The Landlord submitted documentary evidence such as invoices in support of her testimony about doing renovations at the rental unit.

The Landlord submitted documentary evidence relating to approval from strata to change the flooring in the rental unit.

The Landlord submitted documentary evidence in support of her position that she was ordering furniture for the rental unit in April and it was delivered in May.

The Landlord submitted photos and a video of the rental unit as of May 02, 2019. These show the Landlord's belongings in the rental unit.

The Landlord submitted a letter from E.T. with a Notice of Assessment from the Canada Revenue Agency dated April 01, 2019 showing the Landlord's husband's name and rental unit as his address.

The Landlord submitted BC Hydro and Shaw bills for the rental unit that are in her name.

The Landlord submitted correspondence between her and her insurance advisor dated January 02, 2019 about changing the rental unit to her principal residence. She also submitted correspondence dated January 07, 2019 confirming this had been done. The Landlord submitted evidence showing the insurance for the rental unit was changed from "rented condo" to "condo" as of February 01, 2019.

The Landlord submitted evidence showing she ordered an area rug April 08, 2019 that is shown in her photos and video of the rental unit taken May 02, 2019.

The Landlord submitted a receipt dated February 10<sup>th</sup> showing movers moved items from storage to the rental unit.

### Analysis

Section 51 of the *Act* states:

(2) Subject to subsection (3), the landlord...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.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove they are entitled to compensation under section 51(2) of the *Act*. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties disagreed about whether the Landlord moved into the rental unit in May. I am not satisfied based on the evidence of the Tenants that the Landlord did not move into the rental unit in May. The only evidence submitted by the Tenants to support their verbal testimony and position in this regard is an unsigned email from a neighbour and photos showing an absence of garbage and recycling on pick up days. The email is dated April 25, 2019 and therefore does not address whether someone was living at the rental unit in May. I do not find the absence of garbage or recycling on pick up days to be sufficient proof that nobody is living at the rental unit considering the Landlord's evidence on this point.

The Landlord's evidence as a whole supports the position that the Landlord has intended to, and does, occupy the rental unit. The evidence shows the Landlord sought tax related advice in relation to making the rental unit her principle residence. The evidence shows the Landlord changed the insurance for the rental unit from a rental to her principle residence in January. The Notice of Assessment shows the Landlord's husband was using the rental unit as his address in April. The evidence shows the

Landlord has the BC Hydro and Shaw accounts for the rental unit in her name. The evidence shows the Landlord moved belongings from storage to the rental unit in February. The evidence shows the Landlord had belongings in the rental unit as of May 02, 2019.

Further, I find the Landlord did take steps to accomplish the stated purpose of the Notice within a reasonable time after the effective date of the Notice.

There is no issue that renovations were done in the rental unit in January. I accept that the renovations were done for the Landlord's own use of the rental unit given the evidence noted above supporting the position that the Landlord has intended to, and does, occupy the rental unit.

I accept based on the invoice from the movers that the Landlord moved belongings from storage to the rental unit in February.

I accept based on the documentary evidence from the furniture stores that the Landlord was purchasing furniture and accessories for the rental unit in April. The photos and video of the rental unit from May 02, 2019 show that the area rug purchased in April was in the rental unit in May.

The above are all steps taken to accomplish the stated purpose of the Notice. I accept based on the documentary evidence, such as the strata related evidence and evidence about ordering furniture, that these steps took time. Given the nature of the steps taken, and considering the Landlord's documentary evidence, I do not find that the time taken is unreasonable. I find based on the undisputed evidence about the timing of the renovations that the process started in January, the month after the effective date of the Notice. I do not find it unreasonable that it took the Landlord until May to move into the rental unit in the circumstances.

The Tenants' evidence does not cause me to question the Landlord's evidence. Nor does it satisfy me that the Landlord failed to follow through with the stated purpose of the Notice. I do not find the email from the neighbour particularly compelling given it is an unsigned email and not a signed statement. I also note that the Tenants did not call the neighbour as a witness to provide sworn testimony at the hearing. The photos showing an absence of garbage or recycling do not contradict the Landlord's evidence about renovations, moving belongings into the rental unit or furnishing the rental unit.

I also note that I accept that the Landlord's husband stayed at the rental unit sporadically in February and March. The Landlord called her husband as a witness who confirmed this. The Tenants have not submitted sufficient evidence to contradict this. I place more weight on the sworn testimony of the Landlord and her husband than on the Tenants' evidence. I find it difficult to accept, in the absence of further evidence to support this, that the Tenants or neighbour of the rental unit would have been aware of all the comings and goings of the Landlord's husband at the rental unit. I place less weight on the email from the neighbour given it is an unsigned email and not a signed witness statement and not sworn testimony. I do not find the photos of the absence of garbage or recycling sufficiently compelling to overcome the Landlord's and Landlord's husband's sworn testimony on this point. I accept that the Landlord's husband stayed at the rental unit sporadically in February and March and find he used and occupied the rental unit as "occupy" does not mean live in full time.

Given the above, I am satisfied the Landlord took steps to occupy the rental unit starting in January. I find this is within a reasonable time after the effective date of the Notice as it is the month after the effective date. I am satisfied the Landlord moved into the rental unit in May and do not find this to be unreasonable in the circumstances. I am also satisfied the Landlord's husband occupied the rental unit in February and March, again within a reasonable time of the effective date of the Notice. I am not satisfied the Landlord failed to follow through with the stated purpose of the Notice. I am not satisfied the Tenants are entitled to compensation under section 51 of the *Act*.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 10, 2019

---

Residential Tenancy Branch