



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary award for damages and loss pursuant to section 67.

Both parties appeared and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant KS (the "tenant") appeared on behalf of both named co-tenants. The landlord DJ (the "landlord") primarily spoke on behalf of both named landlords.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in September, 2018. The monthly rent was \$1,100.00 payable by the first of each month. The tenants paid the full rent until the tenancy ended in March, 2019.

The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated January 27, 2019. The reason provided on the 2 Month Notice for the

tenancy to end is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord gave evidence that the rental unit is being occupied by the landlord who is operating a daycare business in the suite. The landlord provided documentary evidence showing that the suite is not used for residential purposes but strictly to operate a daycare business.

### Analysis

Section 51(1) of the *Act* provides that a tenant who receives a notice to end tenancy for landlord's use of property is entitled to an amount equivalent to one month's rent on or before the effective date of the 2 Month Notice.

In the present circumstance the parties agree that the monthly rent was \$1,100.00 and the tenants paid the full amount until vacating the rental unit on March 2, 2019. As such, I find that the tenants are entitled to a monetary award in the equivalent of one month's rent, \$1,100.00, under section 51(1) of the *Act* and issue a monetary award accordingly.

Section 51(2) of the *Act* states that a tenant is entitled to a monetary award that is equivalent to 12 times the monthly rent if they have received a 2 Month Notice and steps have not been taken within a reasonable time to accomplish the stated purpose for ending the tenancy and the rental unit is not used for that purpose for at least 6 months.

The parties agree that the landlord issued a 2 Month Notice indicating that the rental unit will be occupied by the landlord or a close family member. The landlord submits that the rental unit is occupied by the landlord who is operating a daycare business in the space. The landlord gave evidence that the rental unit is not being used for residential purposes.

Residential Tenancy Policy Guideline 2A provides the following information about occupying a rental unit:

#### **C. OCCUPYING THE RENTAL UNIT**

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end

a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

As stated, the meaning of occupying a rental unit is restricted to using the rental unit as living accommodation or as part of their living space. I find that operating a daycare business does not fall under the definition of “occupying for a residential purpose”. As such, I find that the landlords are not using the rental unit for the purpose set out in the 2 Month Notice.

Under section 51(3) of the Act, a landlord may only be excused from their requirement to use the rental unit for the stated purpose under extenuating circumstances.

The landlord gave evidence that their intention from the outset when issuing the 2 Month Notice was to operate a daycare business in the rental unit. The Act provides specific provisions under section 49(6)(f) for ending a tenancy in order to convert a rental unit to non-residential use. The landlord did not indicate on their 2 Month Notice that this was their intention. Instead the landlord indicated that the rental unit would be occupied by the landlord and they have failed to do so.

While the landlords have provided some documentary evidence that they lost some clients of their daycare business and suffered some economic distress I do not find this to be sufficient to conclude that there were extenuating circumstances that prevented them from accomplishing the stated purpose. Based on the evidence and testimonies, I find that the landlords issued a 2 Month Notice indicating they would occupy the rental unit when they had no intention of using the rental suite as living accommodations.

I find that the landlord did not accomplish the purpose stated on the 2 Month Notice within a reasonable period of time. Accordingly, I issue a monetary award in the tenants’ favour in the amount of \$13,200.00, the equivalent of 12 months’ rent.

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$14,300.00.

The tenants are provided with this 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 the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 8, 2019

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Residential Tenancy Branch