



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on September 3, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Tenants both attended the hearing. One of the Landlords was present with his daughter.

Both parties confirmed receipt of the hearing documentation and the evidence, and neither party took issue with the service of any of these documents. I find all documentation was sufficiently served.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to compensation pursuant to section 51 the Act?

### Background and Evidence

Both parties agree that monthly rent was \$800.00. The Tenants are seeking 12 months' compensation, pursuant to section 51 of the Act because they feel the Landlord did not perform the stated purpose on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice).

The Tenants stated that the Landlord initially told them that their mother was going to move into the rental unit. After they moved out at the end of March 2019, they kept an eye on the unit and noticed that the lights were usually off, and it did not appear anyone was living in there. The Tenants stated that the Landlord's brother lives next door and he appeared surprised when the Tenants mentioned to him that his mother (and the landlord's mother) would be moving into the basement suite. The Tenants stated that this made them question that this may not actually be happening.

The Landlord stated that they decided to issue the Notice under the grounds they did because their direct family had a need for more space. The Landlord, who was at the hearing, stated that his mother-in-law lives in BC Housing, and is sick, which was a factor in issuing the Notice, as they weren't sure if she would need to come and stay with them. The Landlord's daughter also elaborated further and stated that her parents are both owners of the house, and they have challenges with their marriage, and sleeping arrangements, which is another part of the reason they chose to take the house back for their use. The Landlord's daughter stated that her dad, as one of the Landlords, should be able to move in and use the space, as this fits the ground that they selected on the Notice. The Landlord provided a video of his belongings down in the basement suite (in the rental unit), and it showed clothes, bed, prescriptions, and other personal belongings. The Landlord's daughter expressed that the Landlord should be allowed to repossess the rental unit in order to get more space, regardless of whether it was to house their mother-in-law, or to get an extra bedroom for the Landlords themselves.

The Landlord stated that he plans to continue to live down in the rental unit for the foreseeable future because he is unable to sleep properly in the same area as his wife, and co-Landlord. The Landlord's daughter explained that her parents do not get along very well, and her father has a couple of medical issues which make it difficult to share the same bedroom.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$800.00) because they feel the Landlord did not perform the stated purpose on the Notice.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

First, I turn to the following portion of the Act which outlines what the Tenant would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

#### **Tenant's compensation: section 49 notice**

**51** (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.

In this case, the Landlords issued the Notice on February 12, 2019, for the following reason:

- 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).

The Tenants do not feel the Landlord is being truthful, as they see no lights on when they drive by at night. Further, the Tenants stated that one of the Landlords should not be able to imply that their mother is going to move in, and then turn around and use the house for themselves.

I have considered the evidence and testimony provided, and I note that there is video evidence showing that one of the Landlords is living in the basement suite, and has moved his belongings down there. Although the Tenants stated that they have not seen anyone living down there (no lights etc), I find the video evidence showing personal belongings (prescription bottles, clothes, photos) is more compelling evidence showing that one of the Landlord's has moved into the suite.

Since the Tenants heard one of the Landlords say that their mother was possibly going to move in around the time they got the Notice, they do not feel that the Landlords themselves should be able to move in. I have considered all of this. However, I find the evidence shows that the Landlord took steps in the month following the Tenants' departure, to acquire some additional furniture (receipt provided), and also to actually move their belongings into the space. The Landlord has initially indicated the Notice would take effect at the end of April 2019. The video of the suite (furnished with the Landlord's belongings) was uploaded into evidence on June 5, 2019. I accept that the Landlord has not re-rented the unit, and has moved in.

I find the Landlord took sufficient steps, within a reasonable period to accomplish the stated purpose that was listed on the Notice. I find the evidence sufficiently shows that the Landlords have, in good faith moved into the unit to use for themselves.

In this case, the Tenants would be entitled to compensation if the Landlord did not execute on the grounds they selected *on the Notice*. However, I note the Landlord is entitled to take over possession of the rental unit, regardless of whether or not it is used to house a sick parent, or for the their own residential use. I find either of these reasons would meet the ground that the Landlord has selected.

Overall, I find the Landlords have provided sufficient evidence to demonstrate that they fulfilled the stated purpose on the Notice. I dismiss the Tenants' application, without leave.

As the Tenants were not successful in this application, I decline to award recovery of the filing fee paid to make this application.

Conclusion

The Tenants' application is dismissed, in full, without leave.

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: September 4, 2019

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Residential Tenancy Branch