



# Dispute Resolution Services

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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 26, 2019 (the "Application"). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants filed an amendment dated April 29, 2019 changing the amount sought from \$35,000.00 to \$46,200.00 (the "Amendment"). It also added Landlord J.Y. as a respondent.

This matter came before me for a hearing July 30, 2019 and in Interim Decision was issued July 31, 2019. This decision should be read with the Interim Decision.

The Tenants appeared at the hearing. The Tenants called J.O. as a witness.

The Landlords appeared at the hearing. J.X. appeared to translate. The Landlords called W.C. as a witness.

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

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer 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 \$46,200.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlords failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”).

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant A.H. The Tenancy started March 01, 2018 and was for a fixed term ending February 28, 2019. Rent was \$3,850.00 per month due on the first day of each month. The agreement is signed by Landlord J.Y. and Tenant A.H.

Landlord Q.X. agreed Tenant S.H. was a tenant under the tenancy agreement.

The parties agreed the tenancy ended January 31, 2019.

The Notice was submitted as evidence. It is addressed to Tenant A.H. It was issued by Landlord J.Y. as agent for Landlord Q.X. It is dated October 24, 2018 and has an effective date of February 28, 2019. The grounds for the Notice are that “the rental unit will be occupied by the landlord or the landlord’s close family member”.

Both parties acknowledged the Notice was served on the Tenants October 24, 2018.

I understood both parties to agree that the rental unit is a house with a basement, first floor and second floor and that the Tenants rented the entire house.

The Tenants testified as follows. Landlord Q.X. did not act in good faith in issuing the Notice. Landlord Q.X. intended to renovate the rental unit to make it into a multi-unit residence. After they moved out, they noticed renovations being done to the rental unit immediately. They could see that a wall had been put up in the living room. The rental unit was converted from five bedrooms to fourteen bedrooms. Tenant S.H.’s brother-in-law emailed about renting the rental unit which shows Landlord Q.X. was not living in the rental unit. The Landlord did not live in the rental unit for six months, if at all.

The Tenants submitted the following evidence of note:

- Advertisements for the rental unit showing rooms had been added
- Advertisements for the rental unit showing it was posted for rent stating that the “upper 8 bedrooms 4 bathrooms” were available for a summer rental from May to August
- A screen shot showing the rental unit was posted for rent on May 02, 2019 for summer rental
- Advertisements for the rental unit showing it was posted for rent April 03, 2019 stating that six rooms and two bathrooms in the basement were for rent for September
- An advertisement for three upper rooms of the rental unit for rent posted February 08, 2019
- Email correspondence between S.S. and Landlord Q.X. or witness W.C. Witness W.C. was asked about these and testified that her and her daughter helped Landlord Q.X. rent the unit. The emails indicate that the rental unit was being rented for May to August as of April. They also seem to indicate that the basement was rented to students as of April 06, 2019. The emails state that the basement is rented but that the upper two floors are for rent for summer.

Landlord J.Y. testified as follows. Landlord Q.X. asked her to serve the Notice because he and his family planned to move into the rental unit. The Notice was served at the end of October. In January, Tenant A.H. asked to move out at the end of January and the Landlords agreed to this. She met with Landlord Q.X. and his wife in February and March and they were living upstairs at the rental unit.

Landlord Q.X. testified as follows through the translators. He and his wife moved into the rental unit February 01, 2019. The rental unit was too big for them. They decided to rent out part of the rental unit. He and his wife lived upstairs in the master bedroom. He initially wanted to rent out some of the rooms upstairs, but nobody wanted to rent them. He then decided to rent out rooms to students for the summer. They needed more rooms for the summer rental so they divided the dining room into two rooms and put four rooms in the basement. The rooms were created with temporary dividers which can be easily removed. On March 30, 2019, they advertised to rent eight rooms and four bathrooms for \$12,000.00 for a summer rental. After the summer rental, the plan was to rent out only the basement and he and his family would live in the rest of the house. An advertisement was posted April 04, 2019 to rent the basement to students. He plans to live in the rental unit with his family.

Landlord Q.X., through his son, provided the following testimony in answer to my questions. The basement of the rental unit is a separate suite with its own kitchen and bathroom. Eight rooms in the basement and on the first floor were rented to students from July 01, 2019 to August 15, 2019. He and his wife have been on vacation since July 01, 2019 and have not returned to the rental unit.

Witness W.C. testified that, as far as she knows, Landlord Q.X. was staying in the rental unit from March to June. At first, she testified that she was not around in summer and does not know what happened with the rental unit in summer. In response to questions from Tenant S.H., I understood witness W.C. to testify that Landlord Q.X. moved into the rental unit in early March and left July 01, 2019. I understood her to testify that the rental unit was then rented to others for summer.

In response to my questions, witness W.C. testified that she helped Landlord Q.X. rent the rental unit and the plan was to reserve the basement and rent the upper part of the rental unit for July to August.

The written submissions of Landlord Q.X. state that he lived in the rental unit from February 01, 2019 to June 21, 2019. Landlord Q.X. states, "I guarantee I will live in this property for more than 8 months in 2019 (Feb to end of June, and Sep to Dec)".

Landlord Q.X. submitted signed and notarized letters from friends stating that they are aware he lived at the rental unit. The Landlord also submitted advertisements showing he attempted to rent out different parts of the rental unit from February to September.

It was determined during the second hearing that the Tenants had some evidence that I did not have and I had evidence the Tenants did not have. I allowed the Landlords to submit the evidence the Tenants had and I did not have. I told the parties I would not consider the evidence the Tenants did not have which is a signed letter from Y.H.T.

I note that all parties provided much more testimony and evidence than that noted above. However, I have not outlined all of the testimony and evidence given my decision as stated below which is based on the testimony of Landlord Q.X. The remainder of the testimony and evidence does not affect the decision given Landlord Q.X.'s testimony.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and 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.

(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.

Policy Guideline 2A addresses ending a tenancy pursuant to section 49(3) of the *Act* and states at page two:

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... 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.

The parties agreed the rental unit is a house with a basement, first floor and second floor. The parties agreed the Tenants rented the entire house.

When Landlord Q.X. issued the Notice, he was required to use the entire rental unit for the stated purpose on the Notice. The Notice states that Landlord Q.X., or a close family member, would occupy the rental unit. This means Landlord Q.X., or a close family member, was required to occupy the entire rental unit.

I find there are discrepancies between Landlord Q.X.'s testimony and the advertisements, email correspondence and testimony of witness W.C. I find this calls into question the reliability and credibility of Landlord Q.X. in relation to what happened with the rental unit from February to August of 2019.

However, I do not find it necessary to outline the discrepancies. Landlord Q.X. testified that the basement of the rental unit is a separate suite with its own kitchen and bathroom or bathrooms. Landlord Q.X. testified that the basement and first floor of the rental unit were rented to students from July 01, 2019 to August 15, 2019. I find this is somewhat supported by the advertisements and email correspondence. I also find it is supported by the written statement of Landlord Q.X.

Landlord Q.X. was required to occupy the entire rental unit for six months starting within a reasonable time after February 28, 2019, the effective date of the Notice. This means Landlord Q.X. was required to occupy the entire rental unit until at least August 31, 2019. Landlord Q.X. did not do so as he re-rented the basement suite to students July 01, 2019, within the six-month period. Landlord Q.X. was not permitted to issue the Notice for the rental unit and then re-rent the basement suite of the rental unit to individuals who were not close family members. Landlord Q.X. did not occupy the rental unit, which included all three floors, for six months after the effective date of the Notice as he re-rented the basement suite to students as of July 01, 2019.

Section 51(2)(b) of the *Act* applies. Landlord Q.X. did not use the rental unit for the purpose stated on the Notice for at least six months beginning within a reasonable period after the effective date of the notice.

Landlord Q.X. did not submit that extenuating circumstances existed such that he was prevented from using the entire rental unit for six months. If Landlord Q.X. was suggesting that the house being too big or going on vacation were extenuating circumstances, I do not accept that these are.

Landlord Q.X. must pay the Tenants 12 times the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*. The Tenants are entitled to \$46,200.00.

I acknowledge that the amount awarded exceeds the usual limit of \$35,000.00 for RTB matters. However, Policy Guideline 27 deals with the jurisdiction of the RTB and states:

Section 58(2) of the RTA...provide[s] that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the *Small Claims Act*. The limit is currently \$35,000...

If the claim is for compensation under section 51(2)...of the RTA...the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration. They are not usually complex....

As the Tenants were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$46,300.00. I issue the Tenants a Monetary Order in this amount. I have removed Landlord J.Y. from the style of cause for the Monetary Order as I find it is only appropriate to name Landlord Q.X. in the circumstances.

### Conclusion

The Application is granted. The Tenants are entitled to \$46,300.00. I issue the Tenants a Monetary Order in this amount. This Order must be served on Landlord Q.X. and, if Landlord Q.X. does not comply with the Order, it may be filed in the Supreme 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 *Act*.

Dated: October 28, 2019

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Residential Tenancy Branch