



# 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 pursuant to an Application for Dispute Resolution made by the Tenants on July 18, 2019 and amended on July 26, 2019 (the “Application”). The Tenants applied for a monetary order for monetary loss or other money owed, pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”).

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

The Tenants testified the Landlord was served with the Application package and an amendment by registered mail. The Landlord acknowledged receipt. Further, the Tenants testified that a subsequent documentary evidence package was served on the Landlord by registered mail. The Landlord indicated it was served by UPS but acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord did not submit documentary evidence in response to the Application.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the Tenants entitled to a monetary order for monetary loss or other money owed?

Background and Evidence

The Tenants lived in one of two rental units contained within a half duplex. The parties agreed the tenancy began in or about 2010. The tenancy ended on or about September 1, 2018. Rent was due in the amount of \$950.00 per month. The parties agreed no security deposit was paid to the Landlord.

The Tenants testified the tenancy ended because the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 4, 2018 (the "Two Month Notice"). The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord. Specifically, the Tenants testified they were advised the Landlord's son would be moving into the rental unit. A copy of the Two Month Notice was submitted into evidence.

The Tenants testified that the rental unit was not occupied from the date they moved out until June 2019. In support of this assertion, the Tenants submitted the sworn statement of D.C., dated September 20, 2019, who continue to occupy the other side of the duplex.

The Landlord did not dispute the Tenants' evidence. He acknowledged that his son did not move into the rental unit because he required the use of the entire half duplex. However, the tenant in the other rental unit disputed a notice to end tenancy, drawing out the eviction process for approximately four months. As the Landlord's son could not use the entire half duplex, he chose to find an alternate living arrangement. The Landlord testified the rental property sold in July 2019.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 51(2) of the *Act* confirms that a landlord who issues a notice to end tenancy for landlord's use of property must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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 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. Section 51(3) of the *Act* permits the director to excuse a landlord from paying compensation if there are "extenuating circumstances" that prevented the landlord from using the rental property for the stated purpose.

In addition, Policy Guideline #2A states:

*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.*

*...vacant possession is the absence of any use at all.*

[Reproduced as written.]

While I accept that the Landlord's intention was for his son to occupy the rental unit, the Landlord acknowledged that the rental unit was not used for the stated purpose. Rather, the Landlord conceded the rental unit remained vacant until July 2019, at which time the rental property was sold. Therefore, I find the rental unit was not used for the

stated purpose. Indeed, the rental unit was not put to any use at all. In addition, I find the rental unit as not occupied for any residential purpose as articulated under Policy Guideline #2A. Further, I find there are no extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose. For example, the Landlord's son could have moved into the rental unit until the other portion of the half duplex became available.

Considering the above, I find the Tenants have demonstrated an entitlement to compensation under section 51(2) of the *Act*. The Tenants are granted a monetary order in the amount of \$11,400.00 (\$950.00 x 12).

### Conclusion

The Tenants are granted a monetary order in the amount of \$11,400.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 16, 2019

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Residential Tenancy Branch