



# Dispute Resolution Services

Page: 1

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 order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$8,400 representing payment of an amount equal to 12 times the monthly rent pursuant to sections 51 and 67.

All parties attended the hearing. The tenant was assisted by a Registered Sign Language Interpreter. All parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and landlord VG confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. VG testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act, except as specified below.

### **Preliminary Issue – Service of Electronic Documents**

At the outset of the hearing, the tenant testified that in the evidence package provided to her by the landlords was a memory stick that appeared to be blank. Landlord VG testified that it contained a video file, and that she brought a similar memory stick to the Residential Tenancy Branch office prior to sending it to the tenant and confirmed that the video file was playable.

Rule of Procedure 3.10.5 states:

#### **3.10.5 Confirmation of access to digital evidence**

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

VG testified that neither landlord confirmed with the tenant that she was able to view the file on the memory stick. As such, I find that the landlords have failed to meet their obligation under the Rules of Procedure, and I exclude the video from evidence.

### **Issue(s) to be Decided**

Is the tenant entitled to a monetary order for \$8,400?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2010. The parties renewed the tenancy on January 1, 2017. The rental unit is a self-contained suite located in on the lower level of a single-detached home in which the landlords reside. At the end of the tenancy, monthly rent was \$700 and was payable on the first of each month. The tenant paid the landlords a security deposit of \$300, which was returned to the tenant at the end of the tenancy. The tenant vacated the rental unit on February 1, 2019.

On December 28, 2019, the landlords personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**"). The Notice specified that the tenant must move out by March 1, 2019. The Notice indicated that the rental unit would be occupied by the landlord or the landlord's close family member.

VG testified that landlord SG's parents moved into the rental unit in early March 2019.

The tenant vacated the rental unit in advance of the effective date listed on the Notice, in accordance with section 50 of the Act. She gave the landlords written notice of her intention to do so on January 19, 2019. The landlords both signed this written notice in acknowledgement of its receipt.

After moving out, the tenant testified that the landlords renovated the rental unit. In support of this, she submitted a photograph showing that they had moved furniture onto the exterior upper patio. The parties agree that the rental suite is located on the lower floor. VG testified that after the tenant moved out, the landlords renovated the kitchen located in the non-rental unit, located on the upper floor. The tenant admitted that she did not directly witness (or have any photographic evidence of) any renovations being done to the rental unit after she left.

VG denied that any renovations beyond an interior coat of paint (which she says does not constitute a "renovation") were made to the rental unit prior to MG's parents moving into it.

The tenant testified that she returned to the rental unit in March 2019 and looked through the front window into the former rental unit. She testified that it was vacant.

The tenant also testified that the reason for issuing the Notice did not make any sense, as the landlords' parents live in the guest room of the landlord's home and did not need to move to the rental unit.

VG testified that prior to issuing the Notice, her family's living arrangements were that her parents lived with the landlords for half the year and spent half the year elsewhere. VG testified that MG's parents lived with the landlords during the half-year her parents were absent and spent the other half-year elsewhere.

VG testified that this arrangement has recently changing so that both sets of parents now live with the landlords full-time. In order to accommodate this, the landlords needed to use the rental unit to accommodate both sets of parents.

She testified that MG's parents arrived in Canada on February 26, 2019 and moved into the rental unit shortly after their arrival. She entered copies of MG's parents' flight tickets from India to Vancouver, by way of Paris, dated February 26, 2019 into evidence.

VG testified that at the time MG's parents arrived she was recovering from surgery, and MG's parents spent most of the time in the landlord's portion of the home and did not move any furniture into the main area of the rental unit (which could be seen through the exterior window).

VG testified that MG's parents started sleeping in the bedroom of the rental unit starting in early March 2019, and that the bedroom is not visible from the exterior window that the tenant looked in through.

VG testified that MG's parents began furnishing the main area of the rental unit in mid-March 2019. She testified that they continue to live in the rental unit.

The tenant testified that MG's father has since moved to another house down the street. She offered no corroborating documents to support this claim. VG testified that her father (and not MG's father) often stays with her sister, who lives down the street, but that he still maintains the landlord's address as his primary residence.

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Section 51(2) of the Act sets out the basis for the tenant's claim. It states:

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

52(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.

So, the tenant must prove that it is more likely than not that the landlords have not taken steps in a reasonable period of time to occupy (or have a close family member occupy) the rental unit, or that the landlords have failed to use the rental unit for their own use and occupation or the use and occupation of a close family member.

Based on the testimony of the parties, and the documentary evidence provided, I find that the tenant has failed to discharge her evidentiary burden.

I accept the landlord's evidence that they performed no renovations to the rental unit following the end of the tenancy. The tenant provided no documentary evidence to the contrary in addition to admitting that she did not see any renovations to the rental unit being made.

I find that painting the interior of the rental unit does not constitute a renovation. Painting the interior of a rental unit is common practice in the rental industry, requires no permits, and is a relatively short, non-intrusive process. It is more akin to a form of repair (as would be patching holes in walls or replacing broken appliances).

Any renovations the landlords made to the non-rental unit portions of the residential property (such as their own kitchen) are not relevant to determining if the tenant is entitled to compensation under section 51 of the Act.

I accept the landlord's evidence that MG's parents began occupying the rental unit in early March 2019 and continue to occupy it to the present date. Section 49(1) of the Act defines "close family member":

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

I find that MG's parents meet the definition of "close family member".

I found VG's explanation of why the additional space was requested to be reliable and find that it accounts for the (understandable) confusion the tenant had regarding why the landlords needed accommodation for the MG's parents when in past years they did not.

The tenant failed to provide any evidence that MG's parents have not moved into the rental unit. I accept that it is possible that when the tenant looked into the rental unit in early March 2019, she saw a vacant main room. However, I accept VG's explanation for this. It is reasonable and consistent with the rest of her testimony. The tenant did not deny that VG was recovering from surgery in early March 2019.

I find that by moving into the rental unit in early March 2019, MG's parents moved in a reasonable time after the effective date of the Notice. I note that the effective date of the Notice is the date listed on it (March 1, 2019) and not the date the tenant vacated the rental unit (February 1, 2019).

I find that by MG's parents continuing to reside in the rental unit, the landlords have used the rental unit for the stated purpose on the Notice for at least six months after the effective date of the Notice.

Based on the forgoing, I find that the landlords have met the requirements of section 51(2). As such, the tenant is not entitled to a monetary award under that section, as sought.

**Conclusion**

I dismiss the tenant's application, without leave to reapply.

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: November 13, 2019

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Residential Tenancy Branch