



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 2, 2020. 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 Landlord and the Tenants both attended the hearing. The Landlord confirmed receipt of the Tenants' application and evidence. The Tenants confirmed receipt of the Landlord's evidence.

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 for money owed or damage or loss under section 51 of the Act?

### Background and Evidence

Both parties agreed that monthly rent was \$1,395.00. Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on June 10, 2018. A copy of the Notice was uploaded into evidence, and it indicates the following ground as a reason to end the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parents, spouse or child; or the parent or child of that individuals spouse).

The Tenants feel the Landlord did not perform the stated purpose on the Notice, and they should be entitled to 12 month's compensation as a result. The Tenants stated that they moved out of the unit on September 1, 2018, after living there for around 5 years. The Tenants explained that the Landlord lives one house down the block on the same street. The Tenants stated that the Landlord told them they were being given the Notice because he was going to be selling his house down the street (which he lived in), and would be moving into the Tenants' house for a period of time. The Tenants stated that they visited the Landlord in February 2019, and he told them that he was not living in the subject house, but that he had been using it for storage and for other family members to stay at.

The Tenants stated that they saw a 5<sup>th</sup> wheel trailer parked in the driveway, and it was there for several months. The Landlord stated that this was his trailer and he moved it to the subject property as soon as the Tenants moved out in September of 2018. The Tenants pointed to documentary evidence showing that the Landlord listed his other property down the street, where he was living, around September 13, 2018. The Tenants stated that according to the assessment report, the Landlord did not sell his other house until March of 2019.

The Landlord explained that he has not acted in bad faith, and was needing the extra living space while he sold his other house. The Landlord pointed to the listing for his house, showing that it was listed on September 13, 2018, and he also pointed to an accepted offer, which he provided into evidence, that was made on his house in November 2018. The Landlord stated that this offer fell through because there were some electrical issues which came up in the inspection. The Landlord stated that he did not actually sell his home down the street until January 2019 (with a possession date of March 28, 2019.)

The Landlord stated that after the Tenants moved out in September 2018, he transferred the bills out of the Tenants' names and began paying the hydro and gas bills (provided into evidence). The Landlord stated he immediately started moving couches, chairs, tables, bedroom sets, and furnishings into the subject property after the Tenants moved out so that he could occupy the space, stay in it occasionally while his other house was listed for sale, and have space for his children to come, stay, and use. The Landlord explained that while his house was actively listed for sale, he had to keep it staged and presentable (not too full of furniture), and many of his belongings ended up at the subject property. The Landlord also stated that he has a son and a daughter, who both come and stay overnight regularly on weekends. The Landlord stated that in the past they would typically stay with him at his house, but after listing it for sale, he needed more flex space so that he could accommodate his kids when they visited, and not compromise the condition or presentability of his house.

The Landlord stated that he used the subject house as an extension of his house for himself as well as his kids, so that he could keep his house presentable. The Landlord stated that the subject house was only one house down the block, so he was able to treat it and use it as his living space. The Landlord stated that he was in and out of the subject property all the time from the time he listed his main property in September 2018 until March 2019, when the house sold, and he fully moved into the subject property for a couple of months.

The Tenants took issue with the utility bills presented by the Landlord into evidence, as they show usage which is well below the average or what they would consider to be normal. The Tenants feel the usage shows that the Landlord did not move into the unit at all. The Tenants opined that the Landlord just wanted the house for convenience and have since re-rented the subject house.

The Landlord stated that the utilities were low because he would generally only be over there during the daytime, and his kids only stayed there part time. The Landlord stated that after his house sold in March 2019, he stayed there exclusively until the end of May 2019. The Landlord stated that he moved out of the unit and re-rented it as of June 1, 2019.

### 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 \$1,395.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued.

I turn to the following portion of the Act:

***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.*

*(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.*

In this case, the Landlord issued the Notice on June 10, 2018. The Landlord issued this Notice so that he or a family member could occupy the space. The effective date of the Notice was September 3, 2018. The Tenants moved out by that date.

I find the real estate documentation provided into evidence supports that the Landlord had his residence (a couple of houses down the block) up for sale in mid-September, which was shortly after the Tenants moved out of the subject property. Although the subject house is on a separate lot, and is a separate house, I note it is only steps away,

on the same block. I find this situation enabled the Landlord to utilize and occupy the subject property in ways that would not be possible, had it been further away.

I accept that the Landlord has grown children (at university), who come and stay a few days a month. I do not find it unreasonable for the Landlord to want to utilize the subject house as additional living accommodation and storage while his nearby house sold. Although the utility bills show lower than normal usage, I note they do demonstrate some use. I find the usage is not inconsistent with how the Landlord stated he used the property. The Tenants feel that because the Landlord was still sleeping at his main house, up until March 2019, rather than at the subject property that this means he did not accomplish the stated purpose on the Notice. However, the Landlord expressed that this was part of his intention, to use the property as additional living space, storage space, and space where his children could stay when they visited him.

Although the Landlord was not sleeping in the subject property until his house sold in March 2019, I accept that he moved furniture, furnishings, and personal items into the house so that he could use the space as an extension of his house which was for sale. I find the location of the subject property in relation to the Landlord's house is what enabled the Landlord to utilize the property in the manner he did.

I note Policy Guideline #2A - *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*, states as follows:

#### *OCCUPYING THE RENTAL UNIT*

*Section 49 gives reasons for which a landlord can end a tenancy.*

*[...]*

*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.*

#### *Reclaiming a rental unit as living space*

*If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a*

*landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.*

The situation at hand is not exactly the same as the above noted examples from the policy guideline. However, the policy guideline does provide general context and some useful guidance for how to navigate this portion of the Act and the relevant Case Law. Although the Landlord's use of the subject property was mixed (kids overnighting, storage, day-use), I accept that he moved many of his belongings into the unit part way through September 2018 (as supported by the Landlord's invoice for the moving box).

Even though he was sleeping at his house down the block, I find the evidence and testimony of the Landlord sufficiently demonstrates that he utilized the subject property as part of his existing living space, and did so for at least 6 months. It appears the Landlord used the subject house as additional living accommodation from September until March 2019, then used it for a brief period as his primary residence after his house down the block sold (April/May 2019), and eventually left and re-rented it as of June 1, 2019. The Tenants at one point suggested that the Landlord may have rented it to other people within the 6 month period after they moved out. However, they provided no evidence to support this. In fact, the utility bills show that the unit was lightly used, and in a way which coincides with the Landlord's stated usage. The bills provided span until early April 2019.

I note the above policy guideline speaks largely to situations where the Landlord takes over and occupies previously rented portions of the same building where they live. However, I also note it also speaks to situations where the Landlord may end a tenancy in this manner if they plan to use and occupy a building which is not physically contiguous with the unit they are sleeping in (taking over use of a carriage house as living space). I find this situation is analogous to utilizing a carriage house or a separate outbuilding as an extension of the Landlord's living space, given that the Landlord's house was only steps away from the subject property.

Ultimately, I find it more likely than not that the Landlord has used the rental unit for the stated purpose (as laid out on the Notice) for at least 6 months. As such, I dismiss the Tenants' application on this matter. As the Tenants were not successful in their

application, I decline to award them recovery of the filing fee they paid to make this application.

Conclusion

The Tenant's application is dismissed, in full, 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: January 3, 2020

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Residential Tenancy Branch