



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

The tenants and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application or the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### *Preliminary Issue -*

The tenants submitted a monetary order worksheet, which I was unable to view. The tenants were asked to re-submit the document; however, when it was received, I was also unable to open that document. The landlord confirmed receiving it.

I allowed the tenants to provide their monetary breakdown at the hearing and they did so without dispute from the landlord.

I therefore find the tenants were not prejudiced by me not being able to view the document. I was able to view all other evidence of the parties.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and recovery of their filing fee?

### Background and Evidence

The undisputed evidence was that this tenancy began on August 1, 2014, for a monthly rent of \$2,500.00, and the monthly rent at the end of the tenancy was \$2,572.50. The tenants submitted a copy of the written tenancy agreement.

The tenant's monetary claim is \$11,145.00, comprised of \$5,145.00 for 2 months' compensation for receiving the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and \$6,000.00 for general damages.

In support of this claim, the tenants testified that the landlord issued the Notice on March 31, 2018, by attaching it to the tenants' door, which listed an end of tenancy date of May 31, 2018. The tenants submitted a copy of the Notice, which was dated and signed by the landlord on March 31, 2018. As a reason for ending the tenancy, the landlord listed that the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenants said they moved out of the rental unit on May 26, 2018, and there was a final clean-up on May 30, 2018.

The tenants submitted that the landlord took immediate steps to renovate and list the rental unit, including installing new floors. The residential property was listed for sale on September 21, 2018, that he entered into an agreement to sell on October 17, 2018, and the sale was closed on November 29, 2018.

The tenants submitted that they are entitled to compensation equivalent to 2 months' rent in the amount of \$5,145.00, as the landlord has not used the rental unit for the

stated purpose listed on the Notice and there is no evidence that he ever moved into the rental unit after they vacated.

The tenants' additional relevant evidence included, but is not limited to, the real estate listing and photos from the listing, land title searches showing the date ownership changed and the landlord's new property he purchased within the 6 months of the effective date of the Notice.

As to the tenants' claim for \$6,000.00, they said that this is roughly the equivalent of the increase in monthly rent they were paying for this rental unit and their new rental unit, of \$1,000.00 per month for six months.

In explanation, the tenants submitted that they could have stayed in the rental unit an extra six months at their former rent while the landlord was attempting to sell the property, since he never used it for the stated purpose.

The tenants submitted a copy of their new tenancy agreement.

*Landlord's response-*

The landlord submitted that during this tenancy, he lived with his son and then partner in another home. The landlord and his partner separated and in proceedings before the BC Supreme Court, the landlord was allowed to keep the rental unit property, but was required to sell the family home in order to pay out each other's interests.

According to the landlord, neither party could afford that, so they had to sell the family home. As he did not want to be left without a home for he and his son, the landlord submitted that he had no choice but to move back into the rental unit.

The landlord submitted that after living in the rental unit for several months, he realized that he, his son, and their 80-pound dog could not fit in a 1020 square foot home.

This led to his decision to sell the rental unit, but contended that he lived there for six months, and satisfied the requirements of the Notice.

The landlord's relevant evidence included a copy of a Fortis and electric billing statements showing service from June 1, 2018, through November 29, 2018, a copy of a letter from a neighbour at the rental unit property, a letter from his realtor explaining the divorce situation, an undated Consent Order from the BC Supreme Court, and a

document appearing to be attached to the Consent Order, which indicates that the completion date for the sale of the home was November 29, 2018, and that the buyer will have vacant possession of the property on November 30, 2018.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that on March 31, 2018, the landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of May 31, 2018. The tenants complied with the move-out date, as they have vacated the rental unit fully by May 30, 2018.

The landlord marked the Notice indicating that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Section 51(2) provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy listed in the Notice within a reasonable time after the effective date of the Notice, or if the rental unit is not being used for the stated purpose, the tenant is entitled to compensation equivalent of double the monthly rent payable under the tenancy agreement. This amount of compensation was in effect under a previous version of the Act on the day the Notice was issued to the tenants.

In this case, the effective date of the Notice was May 31, 2018, and six calendar months thereafter ended on November 30, 2018.

I accept the tenants' undisputed evidence that the landlord listed the rental unit for sale on September 21, 2018. This was verified by the real estate listing.

While the landlord submitted he lived in the rental unit until December 1, 2018, I find the evidence proves that he did not. The tenants' documentary evidence included a copy of a BC Assessment statement for the address of the rental unit listing a sales history of the past three years of October 2, 2018.

The landlord's own evidence shows that the billing period for several utility bills stopped on November 29, 2018, as well as showing the sale completion date was November 29,

2018, and that the buyer would have vacant possession of the home on November 30, 2018.

Based on the above, I therefore find that the tenants submitted sufficient evidence to show that rental unit was not being used for the stated purpose on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. I have determined this as the evidence shows at the very least, the purchaser owned the residential property by November 29, 2018.

I therefore find the tenants are entitled to monetary compensation equivalent to double the monthly rent at the end of the tenancy, or \$2,572.50, doubled to \$5,145.00.

Tenants' additional claim- \$6,000.00

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Section 67 of the Act also provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I find the tenants' remedy for other compensation not otherwise granted would have been to file an application to dispute the Notice and in this case, they did not. I find their right to claim for further compensation was therefore exhausted, as they are only entitled to what the Act allows.

I find it was the tenants' choice of what rental unit to move to, and the Act does not allow for choices made by the applicants.

I therefore dismiss their monetary claim of \$6,000.00.

As the tenants' have been partially successful with their application, I award them recovery of their filing fee of \$100.00.

As a result of finding the tenants are entitled to monetary compensation of \$5,145.00 and recovery of the filing fee of \$100.00, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$5,245.00.00.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenants' application for monetary compensation is partially granted and they have been issued a monetary order in the amount of \$5,245.00.

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: February 4, 2020

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Residential Tenancy Branch