



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 08, 2019 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence.

The Tenants testified as follows. The rental unit address is a house with an upper and lower suite. The Landlord lived in the upper suite during the tenancy and still lives in the upper suite. The hearing package and evidence were sent to the Landlord at the upper suite by registered mail on November 08, 2019 and March 04, 2020.

The Tenants had submitted customer receipts for the packages with Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows the packages were delivered and signed for November 12, 2019 and March 07, 2020.

Based on the undisputed testimony of the Tenants, customer receipts and Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Landlord received the packages November 12, 2019 and March 07, 2020, in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenants. 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 \$11,940.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2019 (the "Notice").

The Tenants testified as follows. There was a written tenancy agreement between the parties in relation to the rental unit. The tenancy started June 01, 2017 and was a month-to-month tenancy. Rent at the end of the tenancy was \$900.00 due on the first day of each month. The agreement was signed by all three parties.

The Tenants did not submit a copy of the Notice. The Tenants testified as follows. They were served with the Notice April 02, 2019. The Notice was on the RTB form. It was addressed to them and referred to the rental unit. It was from the Landlord. The Landlord had signed the Notice and dated it March 31, 2019. The effective date of the Notice was May 31, 2019. The grounds for the Notice were that the "rental unit will be occupied by the landlord or the landlord's close family member".

The Tenants testified that they vacated the rental unit May 31, 2019 in accordance with the Notice.

The Tenants testified as follows in relation to what happened with the rental unit after they vacated. The rental unit is empty. It is not being used. They attended the rental unit 30 days after vacating in relation to a modem and the rental unit was empty, was not furnished and was not being used. They understood that the Landlord's daughter was going to move into the rental unit; however, the Landlord's daughter did not move into the rental unit. They continued to talk to the neighbours of the rental unit who said

they are not aware of any traffic going to or from the rental unit. They have been to the area of the rental unit since vacating to talk to the neighbours. The neighbours say there is never anyone in the rental unit and that the Landlord sometimes turns the lights on. They drive by the rental unit daily and walk by it all the time.

I do not find any of the documentary evidence submitted relevant to the issues before me and therefore have not outlined it here.

### Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the undisputed testimony of the Tenants that they were served with the Notice 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.

Policy Guideline 2A sets out the meaning of “occupy” and states:

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 Policy Guideline goes on to state:

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused...

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.

Based on the undisputed testimony of the Tenants, I am satisfied that the rental unit was empty and not being used 30 days after they vacated the rental unit. Based on the undisputed testimony of the Tenants, I am satisfied the rental unit continued to be empty and unused. I am satisfied based on the undisputed testimony of the Tenants that it is more likely than not that the rental unit has remained empty and unused since they vacated.

Pursuant to Policy Guideline 2A, the Landlord was not entitled to issue the Notice and then leave the rental unit empty and unused. Pursuant to Policy Guideline 2A, the

Landlord or a close family member were required to use the rental unit as living accommodation or as part of their living space.

Given I am satisfied on a balance of probabilities that the rental unit was empty and unused 30 days after the Tenants vacated and remains empty and unused, I am satisfied the Landlord did not take steps within a reasonable period after the effective date of the Notice to accomplish the stated purpose for ending the tenancy and that the Landlord did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the Notice.

Given the above, section 51(2) of the *Act* applies. Therefore, the Tenants are entitled to the equivalent of 12 times the monthly rent payable under the tenancy agreement being  $\$900.00 \times 12 = \$10,800.00$ . I note that the Tenants are not entitled to 12 times their new rent as that is not what section 51(2) of the *Act* states.

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 \$10,900.00. I issue the Tenants a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$10,900.00. I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: March 27, 2020

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Residential Tenancy Branch