



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 30, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalf. The Landlord attended the hearing and was assisted in translation by R.W., her daughter. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenants testified the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on the Landlord by registered mail on February 1 and June 2, 2020, respectively. The Landlord acknowledged receipt of both packages. In addition, the Landlord testified the Tenants were served with two documentary evidence packages by leaving copies in the Tenants' mailbox on June 11, 2020. The Tenants acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. 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 parties were given an 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

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy began on March 1, 2012 and ended on May 31, 2019. The reasons the Tenants vacated the rental unit are elaborated upon below. The parties also agreed that rent was due in the amount \$3,000.00 each month. The security deposit was returned to the Tenants at the end of the tenancy.

The Tenants claimed \$36,000.00 as compensation under section 51(2) of the *Act*. The parties agreed the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 23, 2019, which had an effective date of May 31, 2019. The Tenants testified they vacated the rental unit on May 31, 2019, in accordance with the Two Month Notice. A copy of the Two Month Notice was submitted into evidence.

The Tenants indicated that the Two Month Notice was issued on the basis that the rental unit was to be occupied by the Landlord or the Landlords' close family member. The Tenants testified that R.W. was to occupy the rental unit but has yet to do so.

On behalf of the Landlord, R.W. confirmed she has not moved into the rental unit because she gave birth to a child in June 2019 and experienced a difficult pregnancy and delivery. R.W. also testified she has not moved into the rental unit because improvements to make the unit more suitable for her needs are required. However, R.W. testified that she intends to move into the rental unit after the Covid-19 emergency has passed.

Finally, the Tenants claimed \$100.00 in recovery of the filing fee paid to make the Application.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, 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 but does not take steps to accomplish the stated purpose for ending the tenancy or does 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 must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. Section 51(3) of the *Act* permits the director to excuse a landlord in "extenuating circumstances" that prevented the landlord from doing so.

In this case, I find the Landlord did not do what was required under section 51(2) of the *Act*. Indeed, R.W. testified that she has not yet moved into the rental unit more than a year after the Tenants vacated the rental unit. I find there is insufficient evidence before me to conclude that R.W.'s pregnancy and delivery, or the desire to make the rental unit more suitable to the needs of R.W. and her family, amount to extenuating circumstances that relieved the Landlord of an obligation to comply with section 51(2) of the *Act*. Therefore, I find the Tenants have demonstrated an entitlement to a monetary award of 12 times the amount of rent due under the tenancy agreement.

The Tenants' claim for \$36,100.00 exceeds the monetary jurisdiction granted to the director under section 58(2) of the *Act*. Section 3 of the *Small Claims Act* and section 1 of the *Small Claims Court Monetary Limit Regulation* establish an upper limit for claims in the amount of \$35,000.00. However, notwithstanding these provisions, Residential Tenancy Branch Policy Guideline #27 states:

*Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.*

*If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration. They are not usually complex. See Policy Guideline 50: Compensation for Ending a Tenancy for information about these compensation provisions.*

[Reproduced as written.]

After considering the above provisions and applying Policy Guideline #27, I find the Tenants have demonstrated an entitlement to a monetary award for compensation in the amount of \$36,000.00 (\$3,000.00 x 12 months). Having been successful, I also grant the Tenants \$100.00 in recovery of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$36,100.00.

### Conclusion

The Tenants are granted a monetary order in the amount of \$36,100.00. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 22, 2020

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Residential Tenancy Branch