



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 20, 2019, in which the Tenants requested monetary compensation from the Landlords in the amount of \$42,000.00 pursuant to sections 51(2) and 67 of the *Residential Tenancy Act* (the "Act"), and to recover the filing fee.

The hearing was conducted by teleconference on December 16, 2019, February 21, 2020, May 8, 2020 and June 12, 2020 and in total occupied nearly seven hours of hearing time. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both parties also called witnesses.

The parties agreed that all evidence that each party provided had been exchanged. The only disputed evidence was a reference letter provided by the Landlord for the Tenants which was submitted outside the *Residential Tenancy Branch Rules of Procedure*. During the hearing on June 12, 2020, counsel for the Landlord confirmed the Landlord took no issue with the Tenant reading from that letter, which the Tenant did when replying to the Landlord's submissions. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on June 12, 2020. This Decision was rendered on July 17, 2020. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenants recover the filing fee?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and confirmed that this tenancy began August 15, 2013. At the time the tenancy began rent was \$3,500.00 per month. During the hearing before me the Tenant, J.M. stated that the rent was not raised during their tenancy.

The Tenants seek compensation pursuant to section 51(2) of the *Act* which provides that a landlord must compensate a tenant the equivalent of 12 months rent in the event the landlord issues a notice to end tenancy pursuant to section 49 of the *Act* and does not use the property for the stated purpose.

A copy of the 2 Month Notice to End Tenancy for Landlord's Use was issued on January 27, 2019 (the "2 Month Notice"). The effective date of the 2 Month Notice was March 31, 2019 and the reasons cited on the 2 Month Notice were as follows:

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

J.M. stated that they received March 2019 as their free month's rent and vacated the rental unit on March 29, 2019.

J.M. submitted that the rental unit was not used for the stated purpose. J.M. stated that as they lived there for five and a half years, they were friendly with the neighbours and have been informed by the neighbours that the property has not been occupied since their tenancy ended. Introduced in evidence was an email, dated November 25, 2019, from a neighbour N.S. who writes that the rental unit appeared vacant, and has been since the tenancy ended. They also provided an email from another neighbour, G.M., who writes that she also has not seen anyone living there.

J.M. also submitted a copy of a Development Building Application, dated January 18, 2019. J.M. confirmed that they received this document through a *Freedom of Information* request in June of 2019. The building permit indicates the Landlord intended to put a secondary suite in the rental unit. J.M. stated that the rental unit was a single-family dwelling, with a pre-existing basement suite; J.M. further stated that the Tenants, with permission of the Landlord, sublet the basement to university students.

The Tenants also provided in evidence a copy of an advertisement for the rental of the home dated September 16, 2019 (which indicates it was posted September 13, 2019) in which the Landlords seek \$5,000.00 per month in rent for the rental home. The Tenant stated that to their knowledge the rental unit was not advertised before that time.

The Tenants also provided a copy of the electrical utility. The Tenant took a photo of the hydro meter and worked out the rate of usage during this time and compared it to the time they lived there. They noted that the electrical usage had decreased 70% on average since they vacated. He attached his calculation, their B.C. Hydro bill from March 31, 2018, March 31, 2019, and a photo of the hydro meter.

The Tenant testified that the Move out Inspection Report occurred on April 5, 2019. The Tenant stated that he participated in the inspection, with the Landlord and the Landlord's colleagues, and it was clear there was no one living there. The Tenant testified that as he was leaving, he asked the Landlord when they were moving in to which the Landlord responded that they didn't know.

The Tenant confirmed that the Landlord told the Tenants that he and his family were moving in as they wanted to be closer to his daughters' school.

The Tenant stated that he did not know where the Landlords lived, but on an annual basis he did drop the rent cheques off at the home noted on the residential tenancy agreement as the Landlords' address for service, which was also the same address as on the Notice. The Tenant stated that when he dropped the cheques, he spoke to a

woman who indicated that she was also a tenant of the Landlords and that the home is a rental home.

The neighbour, N.S., also testified on behalf of the Tenants. He confirmed he is the neighbour to the rental property and has lived there for 16 years. He also stated that he lived right across the street and their eldest daughter babysat for the Tenants as well. N.S. stated that he believed that the Tenants moved out in the Spring of 2019. N.S. stated that to his knowledge no one else has moved in. N.S. stated that he works from home, but he is in and out 2-3 times a day.

N.S. testified that after the subject tenancy ended, there was a flurry of activity when they did some yard work. He said that since then, there has been no lights on, no movement, and no cars parked out front and no cars in the laneway.

N.S. stated that he has seen people outside the rental home, which he presumed were the Landlords but he has never met them.

In cross examination, N.S. stated that he saw people working outside the rental home 3-4 times over several days. N.S. also confirmed that he could not see inside, nor could he see the back of the house. N.S. also confirmed that he was never in the house.

N.S. stated that when the Tenants were there he could tell when they were home as they parked their vehicles out front and he could see them taking their children out of the vehicle. He also stated that he could see when the lights were on, or the blinds closed.

N.S. confirmed that he sometimes walked his dogs through the laneways and he never saw any evidence of any activity out front or out back.

The Tenant, L.M., also testified. She stated that when she drives to work, she drives right by the rental property such that she drives by twice a day. At all times, she has observed, (aside from a few times) there has never been a car parked out front the property, and she has never seen the blinds open. She stated that maybe a "handful of times" she has seen a car parked out front. She also claimed that there is no parking out back. She stated that there doesn't appear to be any garbage and recycling put out on garbage days, which is put out in the back lane.

The Tenant also stated that within the first two weeks of moving out, a package had been delivered, and she attended the rental unit to retrieve the package. The Tenant

stated that the package was not at the front, so she went to the back door. At that time she observed some workers in the laundry room. She asked them if they had the package and they said that they did.

In cross examination the Tenant confirmed that she drives to work between 7:45-8:15 a.m. and then again at 4:30-6:00 p.m. The Tenant further confirmed that did not know the Landlord's hours of work.

The Tenant further confirmed that she had a cell phone, and that despite this she did not submit any photos showing that there was no garbage and recycling on the scheduled pick up days.

In response to the Tenant's submissions, the Landlord, A.B., testified as follows. He confirmed he is the owner of the rental property and purchased it in 2011. He confirmed that he rented the property to the subject Tenants on August 15, 2013.

A.B. testified that he served the 2 Month Notice on the Tenants on January 27, 2019. He stated the reason he wished to regain possession of the home was to be closer to his daughters' school; he noted that they have two daughters, one who was in grade 10 and one who was in kindergarten. He claimed that when they had their second daughter, it became very difficult to drive both their daughters to school. A.B. also confirmed that as a family they have one vehicle which he drives to work, approximately 15 minutes away. He also stated that he has someone drive his girls to school or extra curricular activities and that his wife takes the bus.

A.B. also testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on February 5, 2019. A.B. stated that the Tenants applied to dispute the 10 Day Notice and a hearing occurred on March 27, 2019, at which time the Residential Tenancy Branch granted the Landlord an Order of Possession, which was effective two days after service (the file number for that matter is included on the unpublished cover page of this my Decision).

The Landlord confirmed that he served the Order on the Tenants on March 27, 2019 and they moved out within the two days, on March 29, 2019

A.B. testified that they moved into the house on April 1, 2019. A.B. confirmed that they were previously living in another home they owned. He stated that on April 15, 2019 a Tenant, T., moved into the Landlord's other home. The Landlord confirmed he has a tenancy agreement with T., although a copy was not provided in evidence.

A.B. also stated that when he moved into the rental unit on April 1, 2019, they changed all the utilities into his name, as well as changing his address on his credit cards, drivers license, and bank cards etc. A.B. stated that when he moved in he noted that the rental unit required repairs and as such he performed needed repairs and the rest of his family moved in on April 14, 2019.

A.B. stated that he received the Tenants' Application in the middle of September 2019 from his new tenant as the Tenants sent the Application to his old home, which was now rented .

In terms of the Tenants' submission that the electricity utility decreased, he stated that he spends more than 12 hours away from the house at his office. He further stated that he and his family went on a vacation to Toronto for 20 days in July 2019 and Edmonton for approximately 12-14 days in August 2019. A.B. also stated that their biggest utility is the gas, not electricity.

A.B. also noted that the Tenants were using the upstairs and the downstairs as they had a tenant, he noted that when he and his family moved in they only used the upstairs. He also noted that in total there were seven people living there during the tenancy, and the Landlord only has four people.

In terms of the secondary suite, A.B., stated that he made an application to renovate the basement. A.B. stated that his application has not been cancelled as alleged by the Tenant, J.M., although he has not proceeded with that work.

In response to the Tenants' submissions regarding the rental ad for the property A.B. testified that due to the downturn in the construction market he experienced a decrease in his income. He claimed that he made an application for refinancing and had to show the amount of income he could generate from the property, such that he advertised the unit for \$5,000.00. He denied any intention to actually rent the property out and stated that he also never showed the property to prospective tenants.

In response to the witness', N.S., testimony that he did not see any lights on in the house, A.B. stated that his wife and daughters spend time in the kitchen and dining room which are at the back of the house. A.B. also noted that all the bedrooms face the back. He also testified that he parks in the back and goes to the back of the house, which may explain why N.S. did not see any lights.

In cross examination A.B. confirmed there is no garage or carport and there is a fence which closes off the entire property to the rear lane, save and except for a small gate. A.B. also confirmed that there is no space to park the car at the back of the property; rather he stated that he parks along the fence adjacent to the laneway. A.B. claimed that he does not obstruct traffic or garbage collection when he parks in the lane.

A.B. confirmed that the living room has a large window but denied that the light in the dining room or kitchen would necessarily be visible from the street.

A.B. also confirmed that he advertised his house for rent on craigslist in mid September 2019. He stated that he did so to justify a new mortgage for refinancing and denied that he lied to the bank and suggested that the bank asked him to advertise on Craigslist.

In terms of the rental ad, A.B. stated that he fixed all the damage and therefore advertised it as "renovated". In this respect, he claimed to have spent \$17,000.00 renovating and repairing the rental unit. A.B. confirmed that he did not make an Application to the Residential Tenancy Branch to claim \$17,000.00 from the Tenants for the damage they did to the rental unit.

A.B. confirmed that there was a final inspection on April 5, 2019. He stated that although they did a move out condition inspection, the Tenant, J.M. disputed any damage because they did not complete a *move-in* condition inspection report. A.B. confirmed that the rental unit was empty when he asked to do the move out inspection on April 5, 2019. A.B. denied that J.M. asked when he was moving in, and also denied saying that he wasn't sure when he was moving in.

In cross examination, A.B. confirmed his daughters attend a private school. He acknowledged there were public schools in the area but denied any knowledge of whether these were good schools or not.

A.B. confirmed he had some minor disagreements with the Tenant J.M. over the course of the tenancy, but this was not the reason to end the tenancy, rather he wanted to move in when his youngest daughter started school.

A.B also denied that the issues relating to the flood was the reason why the Landlord wanted to end the tenancy.

The Landlords' daughter, A.B., also testified. At the time she provided her testimony she was 16 years old. The Landlord's daughter testified that they planned to move into

their home on April 1, 2019 but they needed to do some repairs on the house and they were fully moved in by April 14, 2019.

The Landlord's daughter further stated that her youngest sister, who is five, started going to her school as she is in kindergarten. She further stated that their new house is closer to her school. She noted that their old house was really far away from her friends and now that she is closer she has more free time in general.

The Landlord's daughter also confirmed that she has educational tutors and is tutored at home on Mondays, Thursdays and Fridays. She also stated that the Tenants' lawyer contacted one of her tutors which she found "weird and creepy".

The Landlord's daughter stated that most of her friends live near by their home and she is really happy to live in this house and has met a lot of the neighbours. She noted that she volunteers and collects donations for charity. She also testified that she met the neighbour, N.S. at the end of summer, 2019 when he donated to one of the charities she was fundraising for.

In terms of the repairs to the property, the Landlord's daughter stated they did some landscaping, fixed the laundry machines, replaced the toilet and the bathtub in the downstairs bathroom, and painted her room and her sister's room.

In cross examination the Landlord's daughter reiterated that they moved on April 14, 2019 and confirmed that it was an important date for her because they moved from their old home of 5 years to their new house.

The Landlord's daughter also confirmed that someone drives them to and from school. She confirmed that since they have moved the drive has been cut down by a lot and it has been more comfortable.

The Landlord's Daughter also stated that the living room is on the front of the house and has a big window facing onto the street. The other room on the other side of the front door, has a large window also facing the street, which she uses for studying. She denied it was used as a play room. She stated that she doesn't study at night and also studies in her room. She said that she is a high school student and sleep is very important and she goes to be at around 9:00 p.m. or 10:00 p.m.

The Landlord's Daughter also stated that she doesn't watch television and usually watches movies on her computer or phone. She stated that they have a television but



they don't really watch it as everyone in the family streams movies on their personal devices.

She said she also hangs out in the kitchen and the backyard. She said she and her friends don't generally spend time at the house, as they like to go for coffee and hang out in the nearby shopping area.

The Landlord also provided copies of the various bills for the telephone, internet and electrical utility at the rental unit. He also provided a copy of the change of address for his driver's licence confirming he changed his address to the rental home. Further, the Landlord provide a copy of the moving and delivery invoice from April 14, 2019 and a cleaning invoice from April 10, 2019.

The Landlord's wife, G.B. provided a brief affidavit wherein she wrote that their family moved to the rental home in April of 2019. She also wrote that they went on several holidays in the summer of 2019. Attached to her affidavit were photos of the home, their family and friends as well as photos of gatherings at the home.

The Landlord also provided affidavits from C.L. dated November 21, 2019. He wrote that he started tutoring the Landlord's daughter August 7, 2019 and tutored her at the home once a week for four months. Attached to his affidavit was an electronic meeting invite confirming such a tutoring appointment on October 17, 2019 as well as one from November 21, 2019. He also provided copies of a receipt for payment for tutoring in August, September, October and November 2019 which clearly noted the Landlord's address as the rental unit.

The Landlord also provided an affidavit from his daughter's Mandarin tutor, J.X, dated November 11, 2019. She writes that she has been tutoring the Landlord's daughter for five years and has been tutoring her at the rental home since April 15, 2019.

The Landlord also provided an affidavit from his daughter's math tutor, J.S. dated November 16, 2019. Again, this affidavit confirmed the tutoring occurred at the rental home.

The Landlord also provided an affidavit from his landscaper P.S. dated November 15, 2019. P.S. deposes that he regularly maintains the yard and has done so since April 7, 2019.

Also introduced in evidence by the Landlord was a letter from G.B. dated October 22, 2019. In this letter he writes that he came to the Landlord's home on April 7, 2019 to investigate and repair a leak in the toilet and clogged sink. He further writes that he performed drain maintenance and replaced the sink and toilet. He also wrote that he recommended the Landlord replace the washing machine.

Finally, the Landlord provided photos of various pieces of mail from their financial institutions confirming their address as that of the rental home.

J.M. provided the following testimony in reply to the Landlord's evidence and submissions. He stated that there is no carport, there is no garage, there is no driveway and nowhere for anyone to park out back without completely blocking the lane.

In terms of the visibility of the lights the Landlord indicated the lights were not visible from the street. J.M. stated that there are glass doors separating the study from the living room. J.M. confirmed that if lights were on in either room the lights would flow to the other. He also stated that the dining room is adjacent to the living room and is between the living room and the kitchen. The living room is dining room and living room are not separated by doors, they are completely adjoined and there is a large archway. When the light in the dining room is on it would be visible from the Street.

J.M. also stated that the kitchen is very small and there is no place to sit or "hang out" in the kitchen.

J.M. also stated that he believes the Landlord wanted to end the tenancy because the Tenants refused to pay higher rent. He noted that the Landlord raised this issue on several occasions and told them if they didn't want to pay more they could move out.

J.M. also stated that the Landlord did not want to make necessary repairs to the rental home. He stated that the basement experienced a flood in mid December 2018 and the Landlord failed to take adequate steps to remedy the situation following which the Tenants withheld rent. This was the subject of the prior hearing and although the Tenants were authorized to withhold the cost of the materials the Arbitrator denied their request to withhold rent for their time dealing with the flood. As such, the 10 Day Notice to End Tenancy for Unpaid Rent was upheld and the Landlord was granted an Order of Possession.

J.M. stated that it felt like the Landlord wanted to agitate them to the point where they would just move. J.M. stated that when they received the 2 Month Notice he was not surprised because he felt like the landlord was just trying to get them out.

The Tenants did not apply to dispute the 2 Month Notice and when I asked J.M. to explain this, J.M. responded that he believed the Landlord had a good faith intention to move in.

### Analysis

After consideration of the testimony and evidence before me, the submissions of counsel, and on a balance of probabilities, I find as follows.

I find that this tenancy ended pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. Although the Tenants applied to dispute the Notice, they were unsuccessful in their Application and the Landlord obtained an Order of Possession. I find the Tenants were served the Order of Possession and moved out two days later, on March 29, 2019.

Although the Tenants were also served a 2 Month Notice to End Tenancy for Landlord's Use in January of 2019, the tenancy ended pursuant to the Order of Possession granted in a prior hearing.

Counsel for the Tenants argues that the issuance of the 10 Day Notice and related Order of Possession does not preclude the Tenants from seeking compensation pursuant to section 51(2) of the *Act*.

Sections 49 and 51 must be read together. For clarity I reproduce those sections as follows:

#### **Landlord's notice: landlord's use of property**

**49** (1) In this section:

**"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;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection

(8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

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

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

I agree with counsel for the Tenants that it is the *receipt* of the 2 Month Notice which triggers the Tenants' right to compensation. They are entitled to a free months' rent pursuant to section 51(1) and may be entitled to further compensation pursuant to section 51(2), 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.

Counsel for the Tenants submits that the Tenants should be entitled to compensation for one of three reasons:

1. The 2 Month Notice was fatally flawed.
2. The Landlord did not issue the 2 Month Notice in good faith.
3. The Landlord did not occupy the rental unit.

With respect to the Tenants' first argument counsel submitted that the Landlord should have issued a 4 Month Notice pursuant to section 49(6) on the basis of the Landlord's application for a building permit. I disagree. Section 49(6) Notices are given when a rental unit is rendered uninhabitable. In this case, I accept the Landlord's testimony that he considered renovating the basement suite to ensure it complied with municipal bylaws. There was no suggestion that the main level of the home, which was occupied by the Tenants and later occupied by the Landlord and his family, required renovation or repair in such a manner as to require vacant possession.

In this case, the Landlord issued the Notice pursuant to section 49(3) as he and his family intended to occupy the rental unit. While the Landlord may have wished to complete renovations to the basement suite to create a legal suite, I find this does not negate the Landlord's occupation of the property.

Had the Tenants believed the Landlord issued the incorrect notice, they were at liberty to apply to dispute the Notice pursuant to section 49(8).

In terms of their second argument, counsel for the Tenants argued that the Landlord did not in fact have the good faith intention to occupy the rental unit. Rather, he argued the 2 Month Notice was issued as the Landlord wished to raise the rent and had conflict with the Tenants. Based on the evidence before me, I am not persuaded by this argument.

While the Landlord may have discussed a possible rent increase with the Tenants, no formal steps were taken to effect such a rent increase. Further, I am not satisfied this was a tenancy rife with conflict. The letter of reference provided by the Landlord for the Tenants confirms the positive landlord-tenant relationship. Further, although the parties had a disagreement over the flooding of the rental unit and the necessary repairs, I am not satisfied this was the reason the Landlord issued the 2 Month Notice. Rather, I find the Landlord issued the 2 Month Notice as he intended to move into the rental property with his family to be closer to his daughter's schools.



Again, had the Tenants believed the Landlord lacked the good faith intention when issuing the 2 Month Notice, they were at liberty to apply to dispute the Notice. The Tenant's own testimony was that he did not make such an application as he believed the Landlord in fact had the good faith intention to occupy the unit.

In terms of the third argument, and after consideration of the testimony and evidence before me, and the able submissions of both counsel, I find, on balance, that the Landlord did in fact use the property for the stated purpose on the 2 Month Notice.

I accept the Landlord's evidence that he and his family moved into the rental unit in April of 2019. This testimony was supported by the receipts for moving and cleaning of the rental unit as well as corroborating affidavits from others and testimony from his Daughter.

The affidavit evidence provided by the Landlord confirmed that his daughter receives tutoring at the rental home. Counsel for the Tenants submitted that I should give these affidavits little evidentiary weight given their brevity and what they do not say. He suggested that the affidavits make no mention of furnishings in the home. Considering the purpose of the affidavit, to confirm they tutor the Landlord's daughter and the location this tutoring occurs, I am not persuaded they should have been expected to provide a detailed description of the décor or contents of the home.

I am also persuaded by the Landlord's wife's affidavit and accompanying photos showing the Landlord and his family occupying the home. I also accept her testimony that they were on holidays for a portion of the summer of 2019.

In terms of the Tenants' argument that the electrical utility usage dramatically reduced, I accept the Landlord's testimony that he and his family were away on holidays for much of the summer of 2019. I also accept his submission that when the Tenant and the subtenants resided in the rental home, there were seven people living in the home as opposed to the four when he and his family moved in. In light of this evidence a substantial reduction in the electrical utility is understandable.

I am most persuaded by the Landlord's Daughter's testimony which I found compelling. She stated that they moved into the home in April of 2019. Understandably this was a significant time for her as she moved from her previous home of five years. She is 16 years old and not surprisingly spends most of her time with her friends. She spoke of how this move was convenient for her and allowed her more free time with her friends.

She did not waiver in cross examination and was, at all times, forthright and consistent in her testimony and assertion that she and her family moved into the home.

The Tenants rely on testimony from the neighbours who stated that the home appeared vacant. The Tenant, L.M., also testified that when she drove by the home on her way to and from work she did not see any activity which would suggest the home was occupied. While I accept the Tenant's witness' testimony in terms of what they claim to have observed, I am more persuaded by the testimony of the Landlord's Daughter as to her family's occupation of the home, and their use of the home. I am also persuaded by the affidavit material tendered by the Landlord's daughter's tutors that they attended the home for tutoring purposes. It is possible, that during the Landlord's family holiday in the summer of 2019, that the home appeared unoccupied. It is also possible the Landlord's use of the home, was not as obvious of that of the Tenant's. However, on balance, I am not persuaded that the Landlord failed to occupy the home for six months as required by section 51(2).

Counsel for the Tenants submitted that the Landlord was not credible. He argued that the Landlord claimed to have spent \$17,000.00 repairing damage yet provided no evidence of this work. He also noted this was inconsistent with the Landlord's reference letter for the Tenants. Finally, he argued the Landlord's testimony that he advertised the rental unit in September of 2019 for financing purposes only, was fraudulent at best and criminal at worse.

Counsel for the Landlord noted that without a move in condition inspection, the Landlord had limited chance of obtaining compensation from the Tenants for damage at the end of the tenancy. I agree that the absence of a move in condition inspection significantly affects a landlord's chance of success in such applications.

While I have some concerns regarding the Landlord's intention when advertising the rental unit in September of 2019, there was no evidence before me that the rental unit *was in fact rented to others*. It is also notable that even if the rental unit was rented to others, section 51(2) requires the Landlord to use the rental property for a six month period following the effective date of the notice. Had the rental unit been re-rented within that six month period, the Tenants would have likely been successful in their Application for compensation; however, there was no evidence before me to support such a finding.

Even in the event I was persuaded the Landlord was not credible (a finding I have not made) I am persuaded by the Landlord's corroborating evidence that he and his family

in fact occupied the rental unit for a minimum of six months after the effective date of the 2 Month Notice.

For these reasons I dismiss the Tenants' claim for monetary compensation pursuant to section 51(2). As they have been unsuccessful in their Application, I also dismiss their request to recover the filing fee.

### Conclusion

The Tenants' claim is dismissed.

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: July 17, 2020

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Residential Tenancy Branch