



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDCT, FFT

### Introduction

A hearing was convened on September 15, 2020 in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The hearing was adjourned on September 15, 2020 for reasons outlined in my interim decision of September 15, 2020. The hearing was reconvened on November 16, 2020 and was concluded on that date.

As outlined in my interim decision of September 15, 2020, the evidence the Tenant submitted to the Residential Tenancy Branch on May 26, 2020 was accepted as evidence for these proceedings.

As outlined in my interim decision of September 15, 2020, the Tenant was directed to send a copy of the Dispute Resolution Package to the email address provided by the Landlord, no later than September 22, 2020. The Tenant stated that these documents were sent to the Landlord, via email, on September 21, 2020. The Landlord acknowledged receipt of the documents.

As outlined in my interim decision of September 15, 2020, the Tenant was directed to send a copy of the one page of evidence she submitted to the Residential Tenancy Branch on August 31, 2020 to the email address provided by the Landlord, no later than September 22, 2020. This evidence is a letter, dated February 27, 2020, which was written by a neighbour.

The Tenant stated that the one page of evidence was sent to the Landlord, via email, on September 21, 2020. The Landlord stated that this evidence was not served to her in the documents that were emailed to her on September 21, 2020. The Landlord stated that she did not receive this evidence.

The letter dated February 27, 2020 was read out during the hearing by the Tenant. The parties were advised that I was inclined to adjourn the hearing to provide the Tenant with another opportunity to serve this document to the Landlord. The Landlord stated that she does not wish another adjournment and that she is willing to allow the letter to be considered as evidence, now that she has heard the content of the letter. As the Landlord is willing to allow the letter as evidence, it was accepted as evidence for these proceedings.

As outlined in my interim decision of September 15, 2020, the Landlord was directed to send an identical copy of the evidence package she submitted to the Residential Tenancy Branch on September 10, 2020 to the email address provided by the Tenant at the hearing, no later than September 22, 2020. The Landlord stated that these documents were sent to the Tenant, via email, on September 21, 2020. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

#### Preliminary Matter

The Landlord asked to call a neighbour as a witness, who she anticipated would testify that her mother had resided at the rental unit.

The Landlord did not wish to provide a telephone number for the witness for security reasons. The Landlord therefore contacted the witness directly, with the intent of having the witness dial into the teleconference. The Landlord exited the hearing for a brief period of time. Upon her return she advised the Arbitrator that she was unable to contact the witness and that she had left a message asking the witness to dial into the teleconference. The witness did not dial into the teleconference prior to the conclusion of the teleconference.

Rule 7.19 of the Residential Tenancy Branch Rules of Procedure stipulates that parties are responsible for having their witnesses available for the dispute resolution hearing and

that a witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends.

I find that the Landlord did not comply with rule 7.19 of the Residential Tenancy Branch Rules of Procedure and, as such, I was unable to hear testimony from this witness.

The Landlord did not request an adjournment for the purposes of hearing from this witness. Had the Landlord requested an adjournment, I would not have granted that request as the Landlord failed to comply with rule 7.19.

### Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord stated that the tenancy began in 2011 and the Tenant stated that it began in 2010.

The Landlord and the Tenant agree that:

- when the tenancy ended the monthly rent was \$1,875.00;
- a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant, which declared that the rental unit must be vacated by June 30, 2019;
- the Two Month Notice to End Tenancy for Landlord's Use declares that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit; and
- the Tenant moved out of the unit on June 30, 2019.

The Landlord stated that:

- when the Two Month Notice to End Tenancy for Landlord's Use was served, the Landlord's mother intended to move into the rental unit;
- the rental unit was painted in July of 2019;
- the Landlord's mother moved into the rental unit in July of 2019;
- the Landlord's mother moved into the rental unit because she was separating from her husband;

- she visited her mother at the unit on several occasions;
- while her mother was living in the unit, a washer and dryer was installed, and the unit, including the kitchen, was renovated;
- the hydro bill was in her name;
- the hydro consumption in the unit would have been low while her mother was living in the unit, as her mother has limited needs and does not use a lot of power;
- renovations to the kitchen began in March of 2020;
- the rental unit was advertised for rent in early February of 2020;
- the rental unit was advertised as fully renovated in February of 2020, as the Landlord fully anticipated that it would be renovated by the time it was rented to a third party;
- her mother moved out of the unit in April of 2020; and
- the unit was re-rented for mid-April of 2020.

The Tenant stated that:

- she remained living near the rental unit after June 30, 2020;
- she drove by the rental unit on several occasions in the six months after she vacated and observed that it was vacant;
- there was a blanket covering the front window for approximately six months;
- she does not believe the Landlord's mother moved into the rental unit;
- on February 13, 2020 she noticed that the kitchen was being renovated;
- on February 03, 2020 she found an advertisement for the rental unit, which was submitted in evidence;
- the advertisement stated that the unit was fully renovated, although the kitchen renovation was not completed by February 03, 2020;
- she contacted BC Hydro and they informed her that the hydro bills suggested no activity in the unit, as the consumption was very low; and
- she believes the Landlord renovated the unit and left it empty for six months so it could be re-rented at a higher rate.

The Tenant submitted a letter from a neighbour, dated February 27, 2020, in which a neighbour declared that nobody has resided in the unit since July 01, 2019.

The Landlord submitted a letter from a neighbour, dated August 30, 2020, in which the neighbour declared that the Landlord's mother resided in the rental unit from July of 2019 to March of 2020. The Tenant stated that she spoke to this neighbour and he told her that nobody was living in the rental unit during this period.

The Landlord submitted a letter from her mother, dated August 30, 2020, in which her mother declared that she lived in the rental unit from July of 2019 to March of 2020, but that she vacated the unit because she was concerned drugs had been sold from the rental unit.

The Landlord submitted a letter from her uncle, dated August 10, 2020, in which he declared that he visited the Landlord's mother at the rental unit she lived in the rental unit from July of 2019 to March of 2020.

The Tenant submitted photographs of the rental unit which she took on February 04, 2020. These photographs show the unit under renovation.

The Landlord agrees that the aforementioned photographs depict the condition of the rental unit on February 04, 2020. She stated that these renovations occurred while her mother was living in the unit and that the furniture, she was using had been moved to a different area of the house to facilitate the renovation.

Both parties submitted evidence that is not relevant to this issue in dispute at these proceedings. As such, that evidence is not summarized in this decision.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant was paying monthly rent of \$1,875.00 at the end of this tenancy.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Residential Tenancy Act (Act)*, which declared that she must vacate the rental unit by June 30, 2019, and that the Notice declared that the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit.

On the basis of the undisputed testimony of the Landlord, I find that the Two Month Notice to End Tenancy for Landlord's Use was served so the Landlord's mother could move into the rental unit.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated

purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

There is a general legal principle that places the burden of proving a claim on the person who is making the claim. In these circumstances, the burden of proving the Landlord's mother did not move into the rental unit rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord's mother did not move into the rental unit in July of 2019. I find there is insufficient evidence that corroborates the Tenant's testimony that the unit was empty for several months after she vacated the unit or that refutes the Landlord's testimony that her mother moved into the unit in July of 2019.

In adjudicating this matter, I have placed little weight on the letter from a neighbour that was submitted in evidence by the Tenant, who declared that the unit was not occupied for the period between July 01, 2019 and February 27, 2020, as that evidence is directly refuted by the letter from a neighbour that was submitted in evidence by the Landlord, who declared that the unit was occupied by the Landlord's mother between July of 2019 and March of 2020. As the letters directly contradict each other, I find they have little evidentiary value.

In adjudicating this matter, I have placed no weight on the Tenant's testimony that she spoke with the author of the aforementioned letter submitted by the Landlord, and he told her that the rental unit was not occupied during that period. As there is no evidence to corroborate this testimony, I find that the letter submitted by the Landlord is more reliable than the Tenant's testimony in regard to the evidence of that neighbor.

In adjudicating this matter, I have placed limited weight on the letters from the Landlord's mother and uncle. Although these letters corroborate the testimony of the Landlord, I am aware of the close personal relationship the authors of these letters have to the Landlord and the potential bias of those parties.

In adjudicating this matter, I have placed limited weight on the undisputed evidence that the rental unit was advertised for rent in early February of 2020. As the advertisement does not specifically declare when the unit is available for rent, I find it entirely possible that the rental unit was being advertised for rent in April of 2020.

In adjudicating this matter, I have considered the photographs of the rental unit that show the kitchen being renovated in February of 2020. I find that these photographs show a rental unit that is virtually void of any personal belongings that would support the Landlord's submission that her mother was living in the rental unit during the renovations. Although the Landlord contends that her mother's personal belongings were moved to a different area of the home, she submitted no documentary evidence, such as photographs, that support that testimony. In my view, the photographs serve to refute the Landlord's submission that her mother was living in the unit in February of 2020 and it corroborates the Tenant's submission that the unit was not lived in during February of 2020.

In adjudicating this matter, I have placed no weight on the Tenant's submission that BC Hydro informed her that the hydro bills suggested no activity in the unit in the months following her tenancy, as the consumption was very low. As the Tenant submitted no evidence to corroborate this testimony and that type of information is typically not provided to third parties, I find the evidence is unreliable.

On the basis of the information before me, I am satisfied that the Landlord's mother did not reside in the residential unit in February of 2020.

As this tenancy ended on June 30, 2019, I find that to avoid the consequences of section 51(2)(a) of the *Act*, the Landlord's mother was required to move into the rental unit in July or August of 2019 and to remain living in the unit until at least December 31, 2019. I therefore find that it does not matter if the Landlord's mother was living in the unit in February and/or March of 2020.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord's mother did not live in the rental unit between July 01, 2019 and December 31, 2019. I specifically note that the Tenant submitted no clear evidence, such as photographs of an empty rental unit during those months, that would cause me to find in her favor.

As the Tenant has failed to meet the burden of proving that the Landlord's mother did not live in the rental unit between July 01, 2019 and December 31, 2019, I dismiss her claim for compensation pursuant to section 51(2)(a) of the *Act*.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

The Application for Dispute Resolution is dismissed, 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: November 17, 2020

---

Residential Tenancy Branch