



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant, her legal counsel and landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties each confirmed receiving the other's evidence prior to the hearing.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters-

I found it necessary to include the alternate version of the landlord's name on the style of cause page of this Decision, as it appeared in the landlord's documentary evidence, in the event there are enforceability issues.

Names of cities and countries other than Canada were anonymized for privacy purposes.

Issue(s) to be Decided

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

Background and Evidence

The undisputed evidence is that this tenancy began on March 1, 2019, and ended on or about January 14, 2020. The monthly rent at the beginning and end of the tenancy was \$1,700. Filed into evidence was a copy of the written tenancy agreement.

The tenants said that they vacated the rental unit on or about January 14, 2020, in response to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was issued by the landlord's agent, was dated December 6, 2019, signed by the agent here, and listed an effective move-out date of February 29, 2020. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenants submitted further that they chose to accept that the tenancy was ending as they vacated pursuant to the Notice, earlier than the effective date, with notice to the landlord.

In support of their application, the legal counsel submitted the tenants were informed on or about March 6, 2020, by the upper tenants of the residential property, that no one had moved into the lower unit. On or about August 5, 2020, the upper tenants again informed the tenants that no one had moved into the rental unit.

The legal counsel submitted that the tenants verified the empty rental unit with photographs taken through the window of the rental unit, showing that it remained empty. Filed into evidence were the photographs.

The legal counsel submitted that on September 3, 2020, the tenants became aware that the rental unit was listed for rent by way of a Craigslist posting, and the advertisement is still active as of the day of the hearing. Filed into evidence were the postings.

The legal counsel submitted that the rental unit has not and was never used for the stated purpose listed on the Notice.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$20,400.

*Landlord's agent's response –*

The agent said that the Notice was issued in good faith as the landlord's parents intended to move into the rental unit. In explanation, the agent said that the landlord's parents were to fly into (local city) from another country for a visit, but ultimately were not able to do so as their airline reservations were cancelled due to the onset of the Covid-19 pandemic.

The agent submitted that the landlord's parents had two other airline reservations cancelled. Filed into evidence were the notices of airline cancellation.

According to the agent, ultimately the travel restrictions were lifted on or about August 20, 2020, but the landlord's parents elected not to travel as their (home country) was now safer from the Covid-19 virus than Canada.

The agent confirmed that the rental unit was listed for rent, as the parents will not be moving into the rental unit and the landlord requires rental income.

In response to my inquiry, the agent said the landlord's parents' plans were to "visit" for a year or a half year. The agent also confirmed that the landlord does not live in (local city).

Analysis

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

In this instance, the tenants are required to prove their claim, on a balance of probabilities.

In the case before me, the undisputed evidence shows that the tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

Therefore, the landlord or close family member must occupy the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the 2 Month Notice that was served upon the tenant.

Section 51(2) provides that if 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 if 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, a tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Having reviewed and considered the parties' respective oral, documentary and digital evidence, I find the tenants have met their burden of proof.

The agent confirmed that landlord's parents have not moved into the rental unit and do not intend now to move into the rental unit. It is therefore undisputed that the rental unit has not been used for the purpose stated on the Notice.

Under section 51(3) of the Act, provides that a landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

Residential Tenancy Policy Guideline 50, section E, if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose so that it would be unreasonable and unjust for the landlord to pay the compensation, the arbitrator may excuse the landlord from paying the compensation. An example given in this section is in the case where a landlord ends a tenancy so that a parent can occupy the rental unit and the parent dies before moving in.

In this case, I must consider whether extenuating circumstances prevented the landlord from accomplishing the stated purpose of his parents occupying the rental unit.

I accept that the landlord's parents were originally unable to travel to (local city) due to the travel restrictions. By the agent's confirmation, these restrictions were subsequently lifted. I therefore find that it was the parents' own choice to not move into the rental unit, not due to a serious matter such as either parent's death.

I additionally considered the agent's repeated use of the word "visit", when explaining the purpose of the landlord's parents' using the rental unit. The visit was for an indefinite time, as short as for six months.

Residential Tenancy Branch (RTB) Policy Guideline 2A states that the implication of the word "occupy" means to "occupy for a residential purpose". This Policy Guideline goes on to explain that a landlord can end the tenancy if they, or close family member intend in good faith to use the rental unit as living accommodation or as part of their living space.

I find the evidence shows on a balance of probabilities that the landlord's parents never intended to use the rental unit as a living accommodation, rather I find the evidence shows that the rental unit would be used as a place to stay during a visit of an indefinite time period to (local city).

I also find that an airline cancellation is not sufficient proof that the landlord's parents were intending on occupying the rental unit. For instance, there were no statements or other documents, such as a travel visa showing the landlord's parents could stay for an extended length of time.

For the above reasons, I therefore find the landlord has submitted insufficient evidence to show that extenuating circumstances prevented the rental unit from being used for the stated purpose.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

Conclusion

As a result of the above findings, I grant the tenants a monetary award of \$20,500, the equivalent of monthly rent of \$1,700 for 12 months, or \$20,400, and the cost of the filing fee of \$100.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$20,500.

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 **cautioned** that costs of such enforcement are recoverable from the landlord.

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: December 11, 2020

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Residential Tenancy Branch