



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1170885 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

NL ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing along with their legal counsel, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As neither party took any issue with the admittance of each other's evidentiary materials, the hearing proceeded.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2018, and ended on April 4, 2020 after the tenant was served with 2 Month Notice for Landlord's Use on February 28, 2020. Monthly rent was set at \$1,400.00, payable on the first of the month.

The tenant is seeking compensation in the amount of \$16,800.00, which is the maximum amount she may apply for under the *Act* for the landlord's failure to comply with section 49 of the *Act*. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The close family member selected by the landlord on the form was "the landlord or the landlord's spouse".

The tenant feels that the landlord failed to use the home for the purpose indicated on the 2 Month Notice issued to her on February 28, 2020. The tenant testified that she checked on the rental unit on several different dates, including June 26, 30, and September 24, 2020. The tenant submitted photos she took on these days. The tenant testified that she had knocked on the door, and the unit appeared empty. The tenant testified that nobody answered the door on any of those occasions.

The landlord testified that her father, JG, resides in the rental unit. The landlord testified that after the tenant had moved out, repairs and minor cosmetic upgrades were undertaken before the landlord moved in on July 29, 2020. The landlord testified that the repairs and upgrades took some time due to the state of emergency. The landlord submitted a statement written and signed by her father JG. The landlord testified that her father does not drive, and required some time to move all his personal belongings. The landlord testified that the absence of furniture or the fact that the unit looked bare does not prove that that JG did not move in. The landlord acknowledged the error on the 2 Month Notice where it was noted that the landlord or landlord's spouse would be moving in. The landlord testified that the plan was always for her father to be the occupant, as allowed under section 49 of the *Act*.

The tenant is also seeking a monetary order in the amount of \$1,079.26, which is equivalent to 30 percent of her utility bills. The tenant testified that the landlord failed to maintain the property, resulting in higher utility bills. The tenant testified that the home was very cold, and believes that this contributed to much higher utility costs.

### **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*51(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.*

*Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.*

***6-month occupancy requirement***

*The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).*

Although I accept the observations of the tenant that the rental unit appeared to be vacant, and that nobody had answered the door on the occasions that she had attended, I find that these observations do not sufficiently support the lack of occupancy by the father of the landlord. I find that the landlord and her father provided detailed evidence about the timeline of the move, and that a reasonable explanation was provided for why the unit may have appeared empty. I find that the appearance of vacant unit does not sufficiently prove that that the unit was indeed vacant.

Although the landlord did indicate on the 2 Month Notice that the close family member would be the landlord or their spouse, the landlord noted this was an error. In light of the requirements of the *Act*, I find that the landlord still met the requirements of the *Act* as the main reason indicated for the issuance of the 2 Month Notice was for the landlord or close family member to occupy the rental unit. I find that the landlord's father qualifies as a close family by definition of the *Act*.

I am not satisfied that the landlord failed to fulfill her obligations as required by the *Act*. Accordingly, I dismiss the tenant's entire application for monetary compensation under section 51 of the *Act* without leave to reapply.

The tenant also filed a monetary claim equivalent to 30 percent of her utility bills as compensation for the losses associated with the landlord's failure to maintain and repair the property.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the written and oral submissions of both parties, and while the tenant provided evidence to support that she experienced issues with the home and the landlord's failure to address maintenance and repairs in a timely manner, I find that the tenant failed to provide sufficient evidence to support that the landlord's contravention of the *Act* resulted in the higher utility costs as claimed. As stated above, the tenant bears the burden of proof in supporting the actual value of their loss, and that this loss stemmed directly from the other party's violation of the tenancy agreement of the *Act*. As the tenant failed to satisfy each component required for this claim, the tenant's monetary claim for compensation for her utility bills is dismissed without leave to reapply.

### **Conclusion**

The tenant's entire application 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: February 10, 2021

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Residential Tenancy Branch