



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      MNECT, FF

## Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for compensation pursuant to section 49, and 51 of the Act, and to recover the filing fee.

Counsel for the landlord confirmed they received the tenant’s evidence. The tenant stated that they do not have any witness statements in the landlord’s evidence. Counsel for the landlord stated that the evidence was served on the tenant; however, they are prepared to exclude their witness statements in order for the hearing to continue.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

## Issue to be Decided

Is the tenant entitled to monetary compensation pursuant to section 51 of the Act?

## Background and Evidence

The tenancy began on November 1, 2014. Rent in the amount of \$950.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00. The tenancy ended on September 27, 2020.

The parties agreed that the tenancy ended based on a Two Month Notice to End Tenancy for Landlords.

The reason stated in the Notice was that:

- 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)

The tenant testified that they do not believe the landlord used the rental unit for the stated reason and questioned if the landlord son is living in the premise as claimed. The tenant stated they believe it remains empty.

The tenant testified that they drove by the premise on December 20, 2020 at around 8pm, and on January 6, 2021 at about 6:30pm and there were no lights on in the rental unit. The tenant stated that on January 11, 2021, and January 17, 2021, the blinds were closed.

The tenant testified that on December 12, 2020, they stopped by the property and spoke to the person that was living in the upper portion of the house, which is not subject to this dispute. The tenant stated they talk to this person and they were informed that no one was living downstairs and asked if she was the tenant. The tenant stated that they have no proof of this conversation.

The tenant testified that on January 28, 2021, they stopped by the property again and that they knocked on the door of the upper residence and lower residence and no one came to the door; however, shortly after the person in the upper residence came to the door. The tenant stated that they had a conversation with this person; however, this persons english was very poor and they were using this person's phone to translate the conversation. The tenant stated that they asked this person 3 different times if someone was living in the basement, which they responded that no one was living in the premise. Filed in evidence is a video.

The tenant testified that they also left a door mat and broom outside and they are still there and in the same position.

The tenant testified that they have looked at the landlord's photographs and have compared it with their own and you can see the cablevision cord and the blinds are in the same position. The tenant stated that the premise is also scarcely furnished and it is not reasonable that the landlord's son would live this way when his parents are wealthy.

Cross-examination, Counsel for the landlord asked the tenant if on January 28, 2021, if it is possible that the upstairs person did not fully understand your question due to the language barrier and the way the question was worded. The tenant stated that could be possible; however, they appeared to understand when they were talking about the mail and that they have received the same response four different times that no one was living in the rental unit.

Counsel for the landlord submits that the landlord's son is 25 years old and wanted to move out of the family home because he and his girlfriend wanted some privacy, which is not unreasonable for a person of this age.

Counsel for the landlords submits the landlord son works weekdays from 9:30am to 5:00pm and he also has a second job working three nights a week from 6 to 10pm. Counsel submits just because there are no lights on when the tenant passes by or that the blinds are close is not evidence that the landlord's son is not living there.

Counsel for the landlords submits the rental unit is furnished with the basic needs, such as bed, couch, and table, and one room is also used to store items used for work. Simply because it is not furnished to the tenant's standard is not reasonable.

Counsel for the landlords submit simply because the cablevision cable is still in the same position is because it has not been used by the landlord's son as they do not have cablevision. Counsel stated that the blinds cording is similar; but not exact and does not prove the landlord's son is not living in the premise.

Counsel for the landlords submits the video the tenant made of the upper resident attempting to speak through translation on the phone is ambiguous as they were asking if anyone was downstairs and then adding the word empty. Counsel submits that the upper residence was referring to that no one was home at the time.

TR witness for the landlord testified that they are the son of the landlord and that they moved into the premise because they wanted more privacy because they did not have that in the family home. TR stated that they have a girlfriend and want to get married. TR stated they wanted the opportunity to live on their own and want to learn to make it on their own.

TR testified that they do not have a lot of furnishing and they are not nice; however, they had to rely upon some extra stuff from the family home. TR stated they have not earned enough money at this point in their life to buy more items, such as a TV and they

want to earn this, not take money from their family. TR stated that they have the basics and that is all that is needed, and they use their computer to watch any shows or movies.

DK witness on behalf of the landlord testified that they were living in the upper portion of the house as a tenant when the tenant was living in the basement. DK stated that they are also the sister-in-law of the landlord. DK stated that after the tenant vacated the property, TR moved into the basement at the beginning of October 2020; however, he was seldom seen as he works a lot. DK stated that they move-out of the upper premise at the beginning of December 2020, and DK was still living in the basement when they vacated.

PD testified on behalf of the landlord they are the girlfriend of TR and they have been dating for seven years. PD stated that TR was living with his family an extended family and they never had any privacy. PD stated that TR moved into the basement unit to be on his own and that she stay nights at the premise.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I do not accept the evidence of the tenant that having the lights off, or blinds closed when the tenant goes by the premise from time to time, is proof that the premise is not being used for the intended purpose. It is not unreasonable for lights to be off and blinds closed when someone is not home. This is not evidence of wrongdoing.

I am not satisfied that on January 28, 2021, when the tenant was speaking to a person in the upper unit, that the question was clear or that it was fully understood. This conversation was being translated by a cellular phone. The question asked by the tenant was is their “any one downstairs, empty”. Not is the landlord’s son TR, living in the basement. The response through the translation app, was no one underneath, this simply could mean no one was home at the time. When asked the same question, the response was no one dwells underneath. This could mean that no one is living there. I find without further evidence from the tenant, such as a witness statement from this person, that I cannot determine in what context was this question understood as the responses are conflicting. Further, on cross-examination the tenant acknowledged that it was possible that the person did not understand the question.

Further, the evidence before me, was that RT moved from the family home into the premise in October 2020, so they could have privacy with their girlfriend and experience life on their own as a young adult. I find that is not unreasonable. This was confirmed by the evidence of the witness DK, and PD.

While I accept the rental unit furnishing may be sparse; however, that is not unusual for someone living on their own for the first time. This does not prove the premise is not being used by RT for their own purpose.

Further, I can put no weight on whether a cord, string, door mat or broom that are said to be in a similar or same position. This could simply be that they have not been moved or used. This does not prove wrongdoing.

Based on the above, I find the tenant has not met the burden of proof that the landlord is not using the property for the intended purpose. The evidence above supports the landlord’s son is using the premise for their own use. Therefore, I dismiss the tenant’s application without leave to reapply.

### Conclusion

The tenant’s application 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: March 15, 2021

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Residential Tenancy Branch