



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the tenants served 2 documentary evidence packages consisting of 16 evidence files included in the notice of hearing package and a subsequent package via Canada Post Registered Mail on May 13, 2021. The tenants stated that the landlord was not served with the 6 documentary evidence files which consisted of the signed tenancy agreement. The landlords submitted two identical 50 documentary evidence files by each of the landlord. The landlord's agent, J.K. (the landlords) stated that they were identical packages and that only one needed to be referred to. Both parties confirmed the landlords served two documentary evidence packages consisting of 39 evidence files were served to the tenants. The landlords stated that the remaining 11 evidence files were not served to the tenants. Neither party raised any further service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served

as per sections 88 and 89 of the Act. However, both parties failed to serve the other with a portion of their evidence. On this basis and with this exception the evidence not served to the other party is excluded from consideration in this hearing.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$14,500.00 which consists of:

\$14,400.00	Compensation, Sec. 51 (2) rental unit not used for stated purpose for at least 6 months duration
\$100.00	Filing Fee

The tenants stated that they were served with a 2 month notice to end tenancy for landlord's use of property dated December 14, 2020 which provides for an effective end of tenancy date of February 28, 2021 and the reason selected as:

*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 child of the landlord or landlord's spouse.*

The tenants claim that they complied with the notice and that the landlords did not occupy the rental unit.

The landlords dispute the claim stating that the landlord occupied the rental unit on the weekends only to make repairs and the son was supposed to occupy it but did not due to unforeseen circumstances. The landlords clarified that the son was to occupy the rental unit and go to school but did not. As a result the son stayed in Vancouver and did not move. The landlords also stated that the notice to end tenancy was completed by the landlord, M.H. and that she did not understand the selections that were made on the

notice. The landlords were questioned if they did not understand the forms used then why did she complete them? No answer was given by the landlords.

### Analysis

Section 51 of the Act states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement 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 the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case it is clear based upon the undisputed evidence of both parties that the landlords issued and served a 2 month notice to end tenancy for landlord's use of property. The landlords' selection is for:

*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).*

And has specified:

*The child of the landlord or landlord's spouse.*

The landlords had initially stated that the landlord would occupy the rental unit, but only stated that he would be occupying it on the weekends to perform repairs.

The landlords then stated that the landlord's son was to occupy the rental unit, but that due to not being accepted at a school did not.

I find that since the notice was served no action has been taken by the landlords to occupy the rental unit approximately 4 months later. It is clear based upon the landlords' evidence that the landlords' son does not intend to occupy the rental unit. On this basis, I find that the tenants have provided sufficient evidence to satisfy me that the landlords have failed to take steps within a reasonable time to accomplish the stated purpose for ending the tenancy. The tenants are entitled to compensation of \$14,400.00 as filed.

The tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$14,500.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: June 01, 2021

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Residential Tenancy Branch