



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNETC, FFT

### Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

DH gave the following testimony. The tenancy began July 1, 2016 and ended on October 24, 2021. The monthly rent of \$2050.00 was due on the first of each month. DH testified that he is seeking all the rent he paid of \$5305.00 during a renovation that occurred from July 2019 to December 2019. DH testified that it was an extensive renovation that resulted in not being able to use the balcony or open the windows during that time. DH testified that in addition to the loss of use of the balcony, the persistent noise was a major nuisance for his family as they had a baby in May 2021 and the constant noise affected their quiet enjoyment.

DH testified that despite numerous inquiries to the landlord, he was “rebuffed” each time. DH testified that there was also an issue of water seeping into their unit during rainy days which resulted in DH requesting costs for cleaning the carpet which also were “rebuffed”. DH testified that on August 31, 2021 he was served a Two Month Notice to End Tenancy for Landlords Use of Property with an effective date of October 31, 2021. DH testified that he was led to believe that the landlords’ son was going to be getting married and moving in immediately. DH testified that they lived near the subject unit and would drive by regularly. DH testified that the lights were never on and that the blinds didn’t change position until he filed an application seeking compensation. DH testified that the landlord has acted in bad faith and that the landlords didn’t use the property as noted on the notice and should pay 12 months rent as compensation in the amount of \$24,600.00.

LR gave the following testimony. LR testified that the building underwent an extensive renovation in 2019 that included drainage, windows, siding, painting, building envelope, scaffolding and tarping. LR testified that the tenants had access to two balconies. LR testified that one of the balconies was unaffected, but the tenants told her that they were concerned about using it because it was dusty. LR testified that the tenants were given

an air conditioner to mitigate the inability to open windows. LR testified that no other tenants had issues as alleged by the subject tenants. LR testified that she was at the mercy of the contractor's schedule, and suppliers but, attempted to have the majority of the work completed as quickly as possible. LR testified that the tenants were not affected by any work until August and that portion of the building was completed by September. LR disagreed that the tenants were impacted for the five months as alleged. LR testified that the scope of work was extensive and that all steps were taken to conduct the work quickly and safely in accordance with the local bylaws and Worksafe BC.

BB gave the following testimony. BB testified that she has lived in the unit since December 7, 2021. BB testified that her husband lives in the United States of America and hopes to join him but, is waiting for her "greencard" so that she can move there. BB testified that she still lives in the suite and that she is the daughter of the landlord/owners and that there was no bad faith when issuing the notice.

RW submits that there ought not to be any compensation paid to the tenants as the landlords conducted work for the improvement of the building and enjoyment of the tenants and that work was done in accordance with building codes. RW submits that the notice was given in good faith and that the landlords daughter has lived in the unit much longer than the six months required as per the Act and continues to live there until she is able to legally move to the United States. RW submits that the tenant's application should be dismissed, and no compensation awarded.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claims and my findings as follows

Loss of use of balcony

The tenants seek \$5305.00 which they submit is the total amount of rent they paid for having to live through an ongoing renovation. The landlord testified that this was an extensive renovation for the betterment of the building and for the tenants at no additional cost. As noted above, a party making a claim must satisfy **all four factors** to be granted an amount under Section 67 of the Act. DH failed to provide sufficient evidence to show why he should be compensated for the full amount of rent paid for the months the renovation was ongoing. In addition, the tenants failed to provide sufficient evidence to show that reasonable steps to mitigate any loss was taken. Based on the insufficient evidence before me and the lack of mitigation on the tenants' part, I dismiss this portion of the tenants claim.

12 Month Compensation

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been 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
  - (b) the rental unit is 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The applicants seek payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. The landlord and their daughter as well as their representative provided submissions on behalf of the landlord that addressed the tenant's allegations.

In addition, the landlord submitted numerous documents to show that their daughter resides in the home and has been since December 7, 2021. Based on the above, the landlord has provided sufficient evidence to dispute the allegations of the tenants that the unit was not used. The tenants have not provided sufficient documentation or third-party corroboration to support their allegations. As the tenants have not provided sufficient evidence to support their claim and that the landlord has satisfied me that they used the property for the intended purpose as noted on the Notice to End Tenancy, I hereby dismiss this portion of the application in its entirety without leave to reapply.

The tenants have not been successful in their application and are not entitled to the recovery of the filing fee.

### Conclusion

The tenant's application is dismissed in its entirety 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: October 13, 2022

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Residential Tenancy Branch