



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for compensation related to a Notice to End Tenancy and for the recovery of the filing fee for this application. The matter was set for a conference call.

The Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties agreed that they had been served with the evidence that I have before me in these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to the recovery of the filing fee for these proceedings?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on December 10, 2019. Rent in the amount of \$5,250.00 had been paid by the first day of each month. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlord served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated July 30, 2021. The Notice indicated that the Tenants were required to vacate the rental unit as of September 30, 2021. The reason checked off by the Landlords within the Notice was as follows:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).

Both parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice. The Tenants submitted a copy of the Notice into documentary evidence.

The Tenants submitted that they believe that the rental unit has not been occupied as a primary residence for the Landlord, and that no one is living in the rental unit or the other unit that is located on the rental property.

The Tenants testified they are friends with the neighbours of the rental property, and that those individuals have advised them that they have never seen anyone living on the property. The Tenants also submitted that they have been by the rental property several times since they moved out and that the blinds are always closed and that snow removal was not done, which they feel shows the Landlord is not living in the rental unit. The Tenants submitted 18 pictures into documentary evidence.

The Landlords testified that they purchased this property as a secondary home for their family, and that they and their children do occupy the home. The Landlord submitted that they do have a primary residence in the city but that they and their family are in this home on a regular basis, with them residing in the Tenant's rental unit and their daughter in the secondary suite. The Landlord submitted 64 documents into

documentary evidence, including utility bills, pictures, cleaning and handyman invoices, four witness statements and three affidavits.

The Landlord testified that they and their family often work from the rental property when they are able, to work remotely.

The Landlord acknowledged that they did apply for a building permit, stating that it is their intent to keep the rental unit as is and add a secondary home on the property lot. The Landlord submitted that they have a large family and that the property in its current state is insufficient to house the whole family, so it is their intent to add additional housing on the property.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

#### ***Tenant's compensation: section 49 notice***

***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.***

I accept the agreed-upon testimony of these parties that the Landlord served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of August 30, 2021. I also accept the testimony of the Tenants that they had moved out of the rental unit in accordance with the Notice on August 30, 2021.

In this case, the Tenants have claimed for the additional 12 months of compensation, claiming that the Landlords did not use the rental unit for the stated purpose on the notice.

During these proceedings, the Landlord and the Tenants offered conflicting verbal testimony regarding the Landlord's use of this rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim normally has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim. However, in this case, even though the Tenants are the claimants in this dispute, section 51(2) of the *Act* requires that the Landlord must prove they used the rental unit for the stated purpose on their Notice to end the tenancy. The Resident Tenancy Policy Guideline # 50 provides further guidance, stating the following:

"The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended."

Therefore, it is the Landlord, in this case, that must provide sufficient evidence over and above their verbal testimony that establishes they used the rental unit for the stated purpose on their Notice to End this Tenancy.

I have reviewed the submission of the Landlord and find that there is sufficient evidence before me to show that the Landlord has occupied the rental unit. Specifically, I noted that the Landlord has provided several pictures of themselves and their family in the rental unit, along with witness statements and affidavits that support their claims they do occupy the rental unit, as a secondary home.

Overall, after reviewing all of the submissions of the Landlord, I find that the Landlord has provided sufficient evidence, to prove to my satisfaction that they have used the property for the purpose stated on the Notice to End Tenancy and that they have used it for that purpose of at least six months.

I acknowledge the Tenants' submission that the rental property is not the Landlord's primary residence. However, I must point out that the *Act* does not use such words as "principal residence", "permanent residence", "primary residence" or "full-time

residence". The Act states that a Landlord is to occupy the property for the stated purpose on the Notice.

When interpreting the Act, meaning must be given to the actual words used and it would be inappropriate to give meaning to words that are not present in the statute.

As for the meaning of "occupy", the Act does not define this word, so I have turned to the meaning provided by the Blacks Law Dictionary, which states the following:

Occupy

To hold In possession; to hold or keep for use"

The Residential Tenancy Branches Policy Guide #2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member provides further guidance, stating the following:

#### C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that **"occupy" means "to occupy for a residential purpose."** (See for example: Schuld v. Niu, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) **if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.**

As stated above, I have already found that the Landlord has provided sufficient evidence to demonstrate they have "occupied" the rental unit for the stated purpose on their Notice to end this tenancy. Which was to use this property for their personal use as a secondary home for them and their family.

Therefore, for the reasons stated above, I find that the Tenants have not established an entitlement to compensation payable under section 51(2) of the Act, and I dismiss their claim.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

### Conclusion

I dismiss the Tenants' application in its entirety.

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 21, 2023

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Residential Tenancy Branch