



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord’s Daughter (the “Landlord”) and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Is the Tenant entitled to the return of their filing fee?

### 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 parties agreed that the tenancy began in June 2010 that rent in the amount of \$2,175.00 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$1,050.00 security deposit at the beginning of the tenancy.

The parties agreed that the Landlord served a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on 28 January 2022. The Notice indicated that the Tenant was required to vacate the rental unit as of March 31, 2022. The reason checked off by the Landlord 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, or child of that individual's spouse)
  - Please indicate which close family member will occupy the unit
    - The landlord or landlord's spouse

The parties agreed that the Tenant moved out of the rental unit, in accordance with the Notice as of March 31, 2022, and the Tenant agreed that the Landlord returned the security to the Tenant in accordance with the Act.

The Landlord testified that they did move into the rental unit in April 2022 and that they resided there until December 2022.

The Tenant submitted that the Landlord rented out the basement of the rental unit while they were living there and that in doing this, they breached the Act, as they were to occupy the entire rental unit for their personal use not just part of it. The Tenant confirmed that they had rented the whole property under their tenancy agreement, including the basement.

The Landlord agreed that they had rented the whole property to the Tenant under the tenancy agreement, which included an upper and lower unit contained in a single home. The Landlord also agreed that they had rented out the basement, the lower unit, to someone else while they lived in the upper unit of their home.

## 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 the landlord or purchaser, as applicable, does not establish that*

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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 Landlord's testimony that they did move into the rental, in April 2022, which I find to have been a reasonable period after the effective date of the notice to have started using the rental unit for the stated purpose for ending the tenancy.

However, I also accept the Landlord's testimony that the Landlord rented out the basement unit of this rental property to a new renter during this same time period.

The Residential Tenancy Policy Guide #2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states the following:

### **“Reclaiming a rental unit as living space**

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their

existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

**A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months.** (See for example: *Blouin v. Stamp*, 2021 BCSC 411)”

[reproduced as written, bolding added for emphases]

I accept the agreed-upon testimony of these parties that the tenancy agreement for this tenancy rented the whole property, upper and lower units, to this Tenant. Therefore, I find that the Landlord had a requirement to use the whole property, upper and lower units, for their own personal use for the minimum of six months, in order to be in compliance with section 51(2b) of the *Act*.

I find the Landlord breached section 51(2b) of the *Act*, when they rented out the basement (lower) unit of the rental property, within six months of this tenancy ending. As the Landlord was required to use the entire rental unit for the stated purpose on the Notice for at least 6 months.

Therefore, pursuant to section 51 of the *Act*, I find that the Tenant has successfully proven they are entitled to compensation due to the Landlord's breach of the *Act*. I award the Tenant compensation in the amount of **\$26,100.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement.

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 been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenant a monetary order in the amount of \$26,200.00, consisting of \$26,100.00 in compensation and \$100.00 in the recovery of the filing fee paid for these proceedings.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$26,200.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this 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 2, 2023

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Residential Tenancy Branch