



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for money owed pursuant to section 51 (2) of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants, the Landlord, and the Landlord’s spouse, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord’s acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, an Amendment to the Application for Dispute Resolution (the “Amendment”), and the Tenants’ documentary evidence by registered mail on December 30, 2019. The Tenants confirmed receipt of the Landlord’s documentary evidence by registered mail on May 14, 2020, and May 15, 2020. Neither party raised concerns about the acceptance or consideration of the documentary evidence before me for review.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Tenants, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in Application. At the request of the Landlord, a copy of the decision will be emailed to them at the email address provided in the hearing.

## Preliminary Matters

### Amendment to Monetary Claim

On December 26, 2020, the Tenants filed an Amendment with the Residential Tenancy Branch (the “Branch”) seeking to reduce the total amount of their claim to \$19,200.00 and the Landlord’s confirmed receipt of the Amendment as part of the documentary evidence received by registered mail on December 30, 2020. The Application was amended accordingly.

### Filing Fee

Section 72 allows me the discretion to award recovery of the filing fee. As a result, I will assess whether the Tenants are entitled to recovery of the filing fee as part of their Application.

### Settlement Proposed

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

### Names of Parties

At the outset of the hearing I advised the parties that the name of the landlord shown on the tenancy agreement does not match the name of either of the landlords listed as respondents in the Application. The respondent V.V. stated that they are the landlord listed in the tenancy agreement and that the tenancy agreement contains a shortened version of their name. As a result, I am satisfied that the respondent V.V. is the landlord under the *Act* and I have therefore referred to them as the Landlord throughout this decision. The Landlord provided me with the full spelling of their name and the Application was amended accordingly.

The Landlord’s spouse was also listed as a respondent and a landlord in the application, however, they are not listed as a landlord in the tenancy agreement. As a result, I amended the Application to removed them as a landlord and respondent.

Two Month Notice to End Tenancy for Landlord's Use of Property

In the hearing the parties agreed that a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") was served on the Tenants, however, neither party submitted a copy for my review. As a result, I accepted oral testimony from the parties regarding the form and content of the Two Month Notice and ordered the Tenants to submit a copy for my review no later than 4:30 P.M. (Pacific Time) the following day, Tuesday May 26, 2020. I updated the online dispute resolution system to allow the Tenants to upload a copy of the Two Month Notice for my review and provided them with the website address and their access code for this purpose. I also advised them that they could submit a copy through the online dispute resolution system, or that they could submit a copy through ServiceBC or the Branch, provided it was received by the deadline stated above.

I advised the Tenants that if a copy was not received by the deadline, I would render the decision without consideration of it. The Tenant's uploaded a copy of the Two Month Notice into the online dispute resolution system on May 25, 2020, the date of the hearing, and as a result, I have accepted it for consideration.

Issue(s) to be Decided

Are the Tenants entitled to compensation pursuant to section 51 (2) of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2017, and ended on August 1, 2019, and that rent in the amount of \$1,600.00 was due each month. The parties agreed that a Two Month Notice was personally served on the Tenants on or about June 7, 2019, that the tenancy ended as a result of the Two Month Notice and that the Tenants were provided with free rent for July 2019 as compensation pursuant to section 51 (1) of the *Act*.

The Landlord stated that they, their spouse, their children, and their Mother in-law previously resided in the main house on the property where the coach house rental unit is located, and that they moved to a new home in May of 2019, and that the main house was subsequently rented out. The Landlord and their spouse stated that the Landlord's Mother in-law was having difficulty at the new home due to her medical conditions, as there was no bedroom for her on the main floor, and that as a result, a Two Month Notice was served on the Tenants so that the Landlord's Mother in-law could move into

the rental unit, which has a bedroom on the main floor and only a few steps up to the bathroom.

The parties agreed that the Two Month Notice was signed and dated June 8, 2019, that it contained the address for the rental unit and an effective date of August 31, 2020, and stated that the reason for ending the tenancy was because the Landlord or their close family member intended, in good faith, to occupy the rental unit.

The Tenants stated that they do not believe that the Landlord's Mother in-law ever moved into the rental unit, which is a coach house adjacent to a main house, and submitted a witness statement from a neighbour of the rental property dated December 23, 2019, wherein they state that the Landlord's parents never moved into the rental unit and that instead, a family moved in. The Tenants also provided copies of text messages showing that they were told the Landlord's parents would be moving into the rental unit and a photograph of a vehicle parked in a driveway which they state belongs to the new occupants of the rental unit. As a result, the Tenants sought \$19,200.00, 12 times the monthly rent of \$1,600.00, as they argue that the Landlords failed to accomplish the stated purpose for ending the tenancy or to use the rental unit for that stated purpose for at least 6 months.

The Landlord denied the Tenants' allegations, stating that after the Tenants moved out, their Mother in-law and her niece, along with her nieces children, moved into the rental unit as their Mother in-law requires assistance with daily living tasks and could not handle the stairs at the Landlord's new home. In support of this testimony the Landlord and their spouse pointed to letters authored by the Landlord's Mother in-law, the Landlord's spouse's cousin (the Mother in-law's niece), and the tenant of the main house, stating that the Mother in-law, as well as her niece and her niece's children, have resided in the rental unit since August of 2019. The Landlord and their spouse also pointed to mail and prescription delivery confirmation for the Landlord's Mother in-law listing the rental unit address, and photographs of the Mother in-law in the rental unit, as further evidence that the Mother in-law resides there. As a result, the Landlord and their spouse argued that the Tenants should not be entitled to 12 months compensation under the *Act* as the Landlord's Mother in-law has resided in the rental unit since August 2019.

The Tenants called the reliability of the Landlord's evidence into question stating that all of the bills and the prescription delivery confirmation are recent, and therefore do not show that the Mother in-law moved into the rental unit shortly after they moved out and stating that as there is one mailbox for the entire property, and the Mother in-law

previously resided in the main house, these could simply be bills where the Mother in-laws address has not yet been changed. Further to this, they argued that the statements from the Mother in-law and niece are not impartial, as they are members of the Landlord's family, and inferred that their 3<sup>rd</sup> party evidence from a neighbour is therefore more reliable. They also questioned whether the Mother in-law requires assistance with daily living and has difficulty with stairs.

The Landlord and their spouse stated that in addition to the letters from the family members who reside in the rental unit, they also have 3<sup>rd</sup> party evidence from the tenant of the main house, confirming that the Mother in-law and her niece and children have lived in the rental unit since August 2019. The Landlords spouse stated that the Tenants are not aware of all of their Mother's medical conditions and the Landlord offered to submit medical confirmation if required. The Landlord and their spouse also stated that they can locate older bills for the Mother in-law if required and that the prescription delivery confirmation clearly shows that prescriptions have been delivered there as recently as May 8, 2020, the date of the letter from the pharmacy.

### Analysis

The parties agreed that a Two Month Notice was personally served on the Tenants on or about July 7, 2019, as the Landlord or their close family member, intended in good faith to occupy the rental unit, and that the tenancy ended as a result of the Two Month Notice on August 1, 2019. Section 51 (2) of the *Act* states that the landlord must pay the tenant an amount that is the equivalent of 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 that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date.

The Tenants argued that they are entitled to 12 times their monthly rent of \$1,600.00 as the Landlord's Mother in-law failed to move into the rental unit within a reasonable time after the effective date of the Two Month Notice and failed to reside there for at least 6 months. The Landlord disputed this claim stating that their Mother in-law has resided in the rental unit since August 2019.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that it was incumbent upon the Tenants to satisfy me that it is more likely than not, that neither the Landlord, nor a

close family member, either moved into the rental unit within a reasonable time after the effective date of the Two Month Notice or failed to reside there for at least 6 months. Although the Tenants argued that the Landlord's Mother in-law never moved into the rental unit, I am not satisfied that is the case. While the letter the Tenant's submitted from a neighbour who resides within eyesight of the rental unit states that the Landlord's Mother in-law never moved into the rental unit, they also stated that a family moved in, and I am satisfied by the letters submitted by the Landlord from their Mother in-law, their spouses cousin, and the tenant of the main house to which the coach house is attached, that this family is likely the Landlord's spouses cousin and her children. I am also satisfied by the letters from the Mother in-law, the cousin (the Mother in-law's niece) and the tenant of the main house, as well as the copies of the bills and the confirmation of prescription delivery, that the Mother in-law moved into the rental unit in August of 2019, and still resides there.

Although the Tenants argued that the bills and prescription delivery confirmation are not reliable as the Mother in-law previously resided in the house, this argument does not make sense to me, as everyone agreed in the hearing that the Landlord and their family, including the Mother in-law, moved out of the main house in May of 2019. The Tenants also argued that these bills do not show that the Landlord's Mother in-law moved into the rental unit shortly after they vacated, as they are all quite recent. The Tenants cannot simultaneously argue that the billing addresses are outdated, as the Mother in-law doesn't reside there anymore, while also arguing that the recent nature of the bills and prescription delivery confirmation do not establish that the Landlord's Mother in-law moved into the rental unit quickly enough to comply with the requirements of the *Act*. Further to this, it makes no sense to me why a pharmacy would have delivered prescription medication for the Landlord's Mother in-law to the rental unit as recently as May 8, 2020, if they do not reside there, and according to the Tenants, have not resided, since May of 2019. As a result of the above, I find it more likely than not that the Landlord's Mother in-law resides in the rental unit with her niece and her niece's children, and that they have resided there since August of 2019, which is before the effective date of the Two Month Notice, as the Tenants vacated early.

As the Landlord's Mother in-law meets the definition of a close family member under section 49 (1) of the *Act*, I therefore find that the Tenant's have failed to satisfy me that they are entitled to compensation pursuant to section 51 (2) of the *Act* and I dismiss their claim without leave to reapply. As they were unsuccessful in their Application, I decline to grant them recovery of the \$100.00 filing fee.

Conclusion

The Tenants' Application is dismissed 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: May 25, 2020

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Residential Tenancy Branch