



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a monetary order pursuant to section 49 and 51 of the Act, and to recover the cost of their filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to ask questions of the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. All parties confirmed they were not making any unauthorized recording of the hearing.

During the hearing, the tenants indicated that they received a witness statement from the landlords on May 31, 2021. A copy of that statement was not submitted for my review or consideration. However, the tenants indicated they had sufficient time to read the statement. The landlord was allowed to read the statement at the hearing.

I only refer to the relevant testimony and evidence in this Decision.

### Issues to be Decided

1. Are the tenants' entitled to compensation for the landlord ending the tenancy and not using the property for the intended purpose?

### Background and Evidence

The tenancy began in October 2017. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 was paid by the tenants.

The parties agreed the tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on October 24, 2020, with an effective vacancy date of December 31, 2020. The reason stated in the Notice: The rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse). The family member who will be occupying the unit is the child of the landlord.

The tenants testified that they spoke to their neighbour (MM) when they received the Notice and that they agreed to watch and monitor the rental unit after they vacated.

The tenants testified that they were informed that in February 2021, that the landlord's daughters boyfriend was living there with two friends and that the landlord's daughter was not living their.

The tenants testified that they have provided two witness statements in support of their application. Filed in evidence are two witness statements from MM and LC.

The tenants testified that that it makes no sense that the tenancy agreement filed by the landlords in evidence would have a term about hydro, when they have provided an invoice from the hydro company showing it was in their daughters name.

The witness MM for the tenants testified that the tenants informed them when they received the Notice, that the landlords daughter and her boyfriend would be moving into the rental unit and that was why they were being evicted. MM stated that this "sucks" and was "BS" and offered to monitor the rental unit.

The witness MM for the tenants testified that they never met the landlord's daughter and they don't even know what she looks like. MM stated that they do know that she drives a jeep type vehicle.

The witness MM testified that they have documented and recorded the video from their dash cam on their vehicle, and the only vehicles that were in the driveway belonged to three young men. However, it does not operate on a 24 hour basis.

The witness MM testified that they have had conversation with these men and they have indicated there is no female living at the rental unit.

The witness MM testified that also had their roommate whom is 73 years old, monitor the situation as well. Neither of them believe in their opinion that the landlord's daughter is living there.

The landlords testified that their daughter and her boyfriend moved into the premises on January 2, 2021, which they helped them move into the premise. The landlord stated that they did some minor repairs, such as paint, replace carpets, replace the countertop, and fixed the toilet, while they were residing there.

The landlords testified that their daughter had applied to have the hydro put in their name when she moved into the rental unit; however, the hydro company wanted their daughter to pay a large security deposit. The landlords stated because of that they had the hydro account put back into their name as their daughter could not afford to pay the requested deposit. The landlord stated that they filed the hydro invoice, simply as evidence that their daughter was living at the rental unit. Filed in evidence is a copy of the hydro invoice, dated January 5, 2021, showing the landlords daughter placing the hydro account in their name and a security deposit of \$819.00 was requested.

The landlords testified that their daughter's boyfriend lost his employment in January 2021, and they asked if they could have roommates to help pay the rent. The landlords stated they gave their daughter and her boyfriend permission, and they all entered into a tenancy agreement that commenced February 1, 2021. The landlords stated the tenancy agreement has a provision about payment of hydro, because their daughter could not afford to have the hydro account in their own name because of the large security deposit request. Filed in evidence is a tenancy agreement which shows the landlord's daughter, her boyfriend and two other people reside on the property. This is signed by all parties.

The landlords testified that their daughter had put in a change of address and receives her mail at the rental unit. The landlords stated their daughter also changed the information on their BC drivers license and BC care card. Filed in evidence is a copy of mail addressed to the tenant at the rental unit, which appears to be a T4 slip. Filed in

evidence is a copy of the landlord's daughter drivers license and care card showing the rental unit as their residence.

The landlords testified that the tenants witness MM, testimony that their daughter drives a jeep is not correct and it would be impossible for a dash cam to record all the comings and goings to the rental unit. The landlords stated that their daughter parks out on the street because her roommates leave for work at 4am and that their daughter is a full-time student who has been doing her course online, due to Covid, since September.

The landlords testified that simply because MM has not seen their daughter does not support that she is not residing in the rental unit. The landlords stated that they have lived at their own residence for many years and there are many neighbours they have not seen.

The landlords testified that they have talked to their daughter's boyfriend and roommates on any conversation they had with MM, LC and they were told it was very limited and there was never a discussion about who is living in the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants are seeking compensation pursuant to section 51(2) of the Act, an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement because they believe the landlords have not used the premises for the stated purpose.

In this case, I accept the landlords' testimony over the tenants and their witness that the landlords daughter is living at the rental property, for the following reasons.

The tenants in this matter have no firsthand knowledge and are simply relying upon MM and LC statement.

LC did not attend to provide evidence at the hearing. While LC provided a witness statement, I find I can put little weight upon it. The statement stated that they got to know the tenants well, and knew two of their names. The statement states that they were told no female is living there or ever would be. Firstly, I find it would have been

reasonable to at least name the person or persons who they had this conversation with if she knew them well and provide the date and time of this conversation.

MM testimony is inconsistent. MM stated that she never knew the landlord's daughters or even what she looked like; however, MM knows what vehicle the landlord's daughter was said to be driving. Further, I can put no weight on a dash cam video that MM was documenting and recording, as it was not provided as evidence, and even if it was, the video would only provide a short clip of what is seen at the time. I also cannot put any weight on a conversation MM had with the occupants of the rental unit, no names were given, no dates or times and if MM was documenting and making recording of their dash cam video, I find it would have been reasonable for MM to have this conversation documented, as to the time, date and with whom or even to record the conversation. After all, the sole intent of MM from the start, was to build a case for the tenants. Further, it was simply MM own opinion that the landlord's daughter is not living at the premise.

On the other hand, the evidence of the landlords was that they moved their daughter into the premise with her boyfriend on January 2, 2021. The landlords provided a copy of the hydro invoice dated January 5, 2021, showing their daughters name and the address of the rental unit, and this was requesting a large security deposit to be placed on the account. I find the landlords explanation of why the hydro account was placed back into their name is reasonable and has the "ring of truth", this simply was because their daughter could not afford the security deposit.

The landlord's have also provided a copy of a signed tenancy agreement, between their daughter, her boyfriend and two other friends dated for February 1, 2021. It was not denied by the tenants or their witness that these three men are living, and that the one of them is the landlords' daughter's boyfriend. I find it highly unlikely that there was any conversation with MM or LM on who has the legal rights to possess the premises. Clearly the tenancy agreement filed in evidence show the landlord's daughter is a tenant and has the legal rights to possess the property.

The landlord's have also provided a copy of their daughter's mail sent to the rental unit. This was an important document as it relates to documents to file their income tax. It was not just a basic letter, that could have been sent by anyone. The tenant's daughter also has changed their residential address on their BC drivers license and care card to reflect the address of the rental unit. I find it would be unreasonable for the landlord's daughter, to have her mail sent to the rental unit, and change legal documents, such as her drivers license, if she was not living at the premise.

While I accept the tenants witness LC and MM may have not seen the landlord's daughter, I can put no weight on that. Firstly, they do not know what she looks like and the landlord's daughter does her school online and it may be simply that they have different schedules or that she does not want to interact with her neighbours.

Further, while there were some minor improvements made by the landlords, such as changing carpets, I do not find there was any evidence that this was simply to evict the tenants for renovations. Nor was it an issue at the hearing for the tenants. Yet, it was an issue for their witness MM.

Based on the above, I find the tenants have failed to prove the landlords did not use the premise for the stated purpose. Therefore, I dismiss the tenants' application without leave to reapply.

### 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: June 09, 2021

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Residential Tenancy Branch