



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on August 24, 2009. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on August 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



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## Background and Evidence

This tenancy started on December 15, 2004. This was a month to month tenancy and the tenant paid a monthly rent of \$900.00.

The tenant testifies that he was given a two Month Notice to End Tenancy for the landlord's use of the property. The reasons given on the Notice were that the landlord or the landlords spouse or a close family member of the landlord or the landlords spouse would be occupying the rental unit. The tenant disputed this Notice but the Notice was upheld at a previous hearing. The tenant received one months' rent in compensation for this Notice and moved from the property on October 02, 2008. The tenant later discovered that the property was sold on November 20, 2008. The tenant has provided evidence of this sale from the realtor website.

The tenant is seeking compensation of two months' rent because the landlord did not use the property for the reasons given on the Notice. He is unable to locate the landlords of the property and has filed his application against the property managers who were acting as the landlord during his tenancy. The property manager has sent in a letter detailing that they will not be attending the hearing as they no longer manage the property for the former owners and do not hold any funds in their trust accounts associated with the property.

The tenant is also claiming moving costs to an amount of \$1,308.04 and the costs of two storage lockers for his belongings at a cost of \$3,654.50. The tenant testifies that he had to leave the rental unit quickly and could not find another place to live until March 2009. Therefore, he had to store his belongings until March 2009.

## Analysis

Section 51 of the Act states that if a landlord does not take steps to accomplish the stated purpose for ending the tenancy under s. 49 within a reasonable period after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months the landlord must pay the tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement.

As the landlords agents have failed to appear at the hearing despite being given notice to attend I find that the property managers were the acting landlords at the time of the tenancy and are therefore still bound by the *Act* despite the fact that they are no longer acting for the owners of the property. As they have a vested interest in the outcome of the hearing they should have attended the hearing to fulfill their role in the dispute.

By ending the tenancy with a Notice to End Tenancy for landlord's Use of the Property and failing to use the rental unit for the purpose stated on the notice (i.e. to occupy the rental unit within 6 months of the end of the tenancy), I find that the landlords did not act in good faith when they served the tenant with the two Month Notice to End Tenancy and therefore breached s. 51 of the Act and must compensate the tenant for double the amount of monthly rent of \$1,800.00 pursuant to s.51(2)(b).

With regards to the tenants application for compensation for his moving and storage costs, I find that the compensation given to the tenant in the form of the one months' rent and the two months compensation he is now entitled to is compensation for moving and storage costs and as such should be applied to these costs, therefore this section of the tenants' application is dismissed.

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As the tenant has been partial successful in this matter, he is entitled to recover the \$50.00 filing fee pursuant to s. 72(1) of the Act. A Monetary Order has been issued for the following amount:

Two months compensation	\$1,800.00
Filing fee	\$50.00
Total amount due to the tenant	<b>\$1,850.00</b>

## Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,850.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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*.

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Dated: December 21, 2009.

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Dispute Resolution Officer