



# 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 tenants for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenants served the landlord by registered mail on April 20, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the Act with notice of this hearing. Both Parties confirm receipt of each other evidence packages prior to this hearing.

The female tenant and the landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

This tenancy started on November 01, 2008. This started as a fixed term tenancy which expired on September 31, 2009 and which then reverted to a month to month tenancy until it ended on October 31, 2009. Rent for this unit was \$1,400.00 per month. The tenant's security deposit has been returned to them by the landlord.

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The tenant attending states they were served two separate One Month Notices to End Tenancy for cause which they disputed successfully and a Two Month Notice to End Tenancy for landlords' use of the property which they did not dispute. However, the tenants now dispute the reason given on the Two Month Notice i.e. All the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant has provided a copy of the contract of purchase and sale addendum between the landlord and the purchaser of the property dated June 19, 2009. This contract addendum states that the seller has been notified that the buyer will demolish home and build a new house on the property. It further states the buyer has gone to the Residential Tenancy Branch and has made all inquiries regarding notice to tenants and compensations and is fully satisfied with these findings. The buyer will receive vacant possession of the property on possession date and the seller is to give notice to the tenants to vacate the property by November 01, 2009. The tenant has also provided documentary evidence to show that before the property was demolished the purchasers attempted to re-rent it as a For Rent notice was placed in the front window. The tenant also claims that the Two Month Notice was given before all property transfers were completed.

The tenant argues that the landlord had full knowledge that the purchasers did intend to demolish the rental unit and did not intend to occupy it from the information on the contract of purchase and sale addendum. The tenants seek the equivalent of two months' rent of \$2,800.00 in compensation as the reason given on the Notice to End Tenancy is not valid.

The tenant testifies that at a previous hearing she received an Order for the landlord to repair an electrical switch which was faulty and posed a potential fire risk; the landlord was ordered to make this repair on or before August 07, 2009. The tenant states the landlord did not make this repair by August 07, 2009 and on August 08, 2009 the tenants had an electrician carry out the repair. The tenants seek to recover the cost of this repair from the landlord to the sum of \$178.26. The tenant states because of this faulty light switch they lived in constant fear of a fire.

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The tenants seek compensation for harassment by the landlord. The tenant claims he wanted them out of the property before the end of their fixed term so he could benefit financially. She claims he did not inform them that the house was up for sale and they had to endure people looking over their fence at the property while they were in their back yard. It was this person who told them he was looking at the house as it was for sale. The tenant states she challenged the landlord about this and he told them he would not be showing the house as it was a tear down and people only wanted to view the property. The tenant states the landlord should have informed them so they could have made their belongings secure.

The tenant states they were harassed by a large amount of mail coming to their house for the landlord. The tenant took this to the landlord and told him it was not acceptable as they were often away from the house and a build up of mail would make it obvious to others that no one was home. The tenant claims this would also put their property at risk.

The tenant claims that at the start of the tenancy the landlords' wife came with a locksmith to change the backdoor lock. The tenant claims the landlords' wife entered the house and opened doors and windows and pulled a table to a window to stand on.

The tenant testifies that the landlord called the police and reported her for growing marijuana. The tenant states she does not grow this substance but does have a licence to possess and consume it for medical purposes which the landlord was aware of. The police called at her house to act upon this complaint but did not come in to the house.

The tenant states the landlord issued threats to her over the phone and she felt frightened and intimidated by him. The tenant claims the landlord called the City and made a complaint about their construction equipment stored at the property. They were ordered to remove this by the City which they complied with.

The tenant seeks to recover rent paid in compensation for the landlords' harassment and intimidation to the sum of \$8,400.00.

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The landlord disputes the tenant's claims. The landlord states that he would have no knowledge that the new owners of the property had permits in place to demolish the building and thought they were going to live there before they demolished it. Therefore the landlord states he should not be responsible to compensate the tenants to the sum of \$2,800.00.

The landlord states that the issues with the light switch were dealt with at a previous hearing he does not dispute that an Order was served on him to repair the light switch by August 07, 2009, but claims the switch was not really faulty it was the way the tenant used force to switch it on and off. The landlord also claims he sent the tenant a notice on August 05, 2010 that the repair would be done on August 11 or 15 as the landlord could not get someone out before August 07, 2009 as ordered. The landlord also states the tenant did not reply to this letter and he always found it difficult to get access to the rental property.

The landlord testifies that he did not notify the tenants that he was selling the property as there is no requirement to do so. The landlord also states that he and his wife had a redirection on their mail from Canada Post and the only mail going to the house would be junk mail which he would have no control over. He states that he told the tenant to just throw it away. The landlord testifies that he and his wife went to the property on November 19, 2008 to change the locks at the back door. He did not go with a locksmith as suggested by the tenant. He claims the tenants had not yet fully moved into the property and were not paying rent. He states he notified the tenants that they would be changing the locks for them and that the door would not be secure. He states the tenant said it would be alright as they had nothing of any importance in the house yet. The landlord states his wife did go in to open some windows and doors to air the house and the tenant became very angry about this when she phoned the next day and accused them of snooping through her things.

The landlord disputes the tenants' testimony and evidence that he has harassed or intimidated them and although he did get angry with the tenants they also became angry with him. He states he did have some concerns about the tenant growing marijuana on the property and that is why the police were called but he had no evidence to support this. The landlord states that he

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could not carry out an inspection of the property as the tenants had a large dog and so could not enter even if notice had been given to the tenants.

The landlord testifies that he did not contact the City. Instead it was the City who contacted him after a complaint from neighbours about the tenants storing commercial equipment in their yard. The tenant states he did make an offer to the tenants to end the tenancy early and return rent to them at the last hearing but they refused. He states if this was all about a financial gain on his part he would never have made the tenants that offer.

Both parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

## Analysis

I have carefully considered all the pertinent evidence before me, including the affirmed evidence of both parties. With regards to the tenants claim for compensation for double the monthly rent because the reason given on the Two Month Notice is invalid; Normally in this circumstance the purchaser would be held liable for any compensation due to the tenants if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 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 beginning within a reasonable period after the effective date of the notice (S.51).

However in this instance I find the landlord was fully aware on June 19, 2009 from the contract of purchase and sale addendum that the purchasers intended to demolish the rental unit. Although he may not have been aware when this would take place it does not discount the fact that he was aware of this and he did issue a Two Month Notice on August 26, 2009 on the grounds that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

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The purchaser did not occupy the rental unit within a reasonable period and did demolish the rental unit on March 31, 2010. Section.51(2) of the Act states: the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement if the rental unit is not used for its intended purpose as stated on the Notice to End Tenancy. As I find the landlord issued this Notice with prior knowledge and the rental unit was demolished within six months of the end of the tenancy then the landlord is responsible to compensate the tenants to the amount of **\$2,800.00**.

With regard to the section of the tenants claim for the sum of \$178.26 for the repair to the switch; I find the landlord was given an Order to repair this switch by August 07, 2009. The Order was made at a hearing held on July 27, 2009. Therefore the landlord had 11 days to organize an electrician to make these repairs. The landlord did not send the tenants a letter until August 05, 2009 to give them two suitable dates which were past the date made in the Order and the tenants then acted on the Order and organized the repair of the switch themselves and incurred costs for this which they claim back from the landlord. Consequently as the landlord failed to make the repair as Ordered I find the tenants are entitled to recover the sum of **\$178.26** from the landlord.

With regard to the remainder of the tenants claim for intimidation, harassment and the loss of quiet enjoyment of their rental unit; in this matter the burden of proof falls on the tenants to provide sufficient evidence to support their claim. This means that if the tenant's evidence is contradicted by the landlord, the tenants will generally need to provide additional, corroborating evidence to satisfy the burden of proof. Harassment is defined in the Dictionary of Canadian law as "engaging in a course of vexatious comment or conduct that is known or ought reasonable to be known to be unwelcome". I find the relationship between the tenants and landlord had broken down to an extent that tempers became frayed on both sides and normal communication between the parties was difficult. I further find the tenants have provided no corroborating evidence to show that the landlord informed the city of their construction equipment, or otherwise behaved in a threatening manner. A landlord is entitled to contact the police if he has suspicions that marijuana is being grown on the premises.

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With regard to the tenants application concerning issues with the landlords mail; While this was obviously an inconvenience to the tenants there is no evidence to show that this caused them to lose enjoyment of their rental unit and although there may have been a potential risk of people knowing the house was unoccupied no actual harm came to the tenants or their possessions because of this. I also find the landlord would have no control over companies that continually send out junk mail and there has been no evidence presented that shows this mail was anything other than junk as declared by the landlord.

With regards to the tenants claim that the landlords' wife entered the house without proper notice, again this allegedly happened some time ago at the start of the tenancy, it has not been repeated and the landlord contradicts the tenants' evidence with regard to his wife using the tenants table to stand on.

With regard to the tenants claim that the landlord should have notified them that the house was for sale; there is no provision in the *Act* for a landlord to notify the tenant that he has put the house up for sale. A landlord is only required to follow correct procedures for giving the tenants a Notice to End the Tenancy if requested by the purchasers.

With regard to the tenants feeling unsafe due to the faulty light switch; this matter was dealt with at a previous hearing, no harm came to the tenants or their possessions and the matter was rectified by them. Temporary discomfort or inconvenience does not warrant a basis for a breach of the covenant of quiet enjoyment.

Consequently I am not satisfied that the tenants have been subjected to harassment, intimidation or suffered a loss of quiet enjoyment of their rental unit that would warrant a monetary award. Therefore the remainder of the tenant's application for the sum of \$8,400.00 is dismissed without leave to reapply.

As the tenants have been partially successful it is my decision that they are entitled to recover the \$100.00 filing fee paid for this application from the landlord pursuant to section 72(1) of the Act.



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A Monetary Order has been issued pursuant to section 67 of the Act as follows;

Compensation for the Two Month Notice invalid reason	\$2,800.00
Filing fee	\$100.00
Total amount due to the tenants	\$3,078.26

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$3,078.26. 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*.

Dated: August 27, 2010.

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Dispute Resolution Officer