

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicants for compensation pursuant to section 51 of the Residential Tenancy Act (the Act) in respect to a section 49 Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Respondents on November 18, 2009. The Notice caused the Applicants to vacate by the end of January 2010.

Service of the hearing documents, by the Applicants to the Respondents, was done in accordance with section 89 of the Act, sent via registered mail on August 27, 2010. The Respondents are deemed to be served the hearing documents on September 1, 2010, the fifth day after they were mailed as per section 90(a) of the Act.

The Respondents asserted they did not receive the Notice until September 28, 2010, when they returned from a two month vacation. However, I find that the Respondents were sufficiently served the Application for Dispute Resolution as per their appearance and submission of evidence.

Both the Respondents and Applicant DD appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

I note that the Respondents testified with the aid of an interpreter.

### Issues(s) to be Decided

Are the Applicants entitled to obtain a monetary order?

### Background and Evidence

The tenancy ended on January 31, 2010 after the Applicants were served a two Month Notice to End Tenancy under section 49 of the Act for Landlord use of property.

Applicant DD testified that she was told they had to vacate the rental unit on that date due to the Respondents' plan to move into the unit, even though at the time it was a financial and emotional hardship to be forced to move.

The Applicant testified that the rental unit was never repaired and renovated as per the original agreement and that she and Applicant ND did not leave the rental unit in the state claimed by the Respondents.

The Respondents testified that the original Two Month Notice was issued because they planned to move into the unit upon vacancy, which occurred on January 31, 2010. The Respondents further testified that they were unable to move into the unit due to the condition and that extensive repairs needed to be done. The Respondents testified that in March 2010, they moved a few items of furniture into the rental unit.

The Respondents testified that the seven month delay for moving was due to the handyman's schedule. I find that there was no plausible explanation for the delay in repairing.

When queried, the Respondents admitted that they have never moved in, that the rental unit is now being rented to new tenants, beginning September 1, 2010, and that this occurred while the Respondents were in the middle of their two month vacation.

When queried, the Respondents stated the complex was built in the 1970's, but did not know the age of the carpet or the interior wall paint, even though they submitted receipts for the repair of these items, apparently for the purpose of demonstrating the damage was at the hands of the Applicants. The Respondents further admitted that there was no move in or move out condition inspection reports taken with the Applicants in compliance with the Act and offered no proof of the condition of the unit both prior to and after the tenancy of the Applicants.

The Applicant responded that the rental unit was a "mess" when she and Applicant ND moved in and that the repairs promised them by the Respondents were never started and further, that the Notice was issued for retaliation and not the stated purpose.

### Analysis

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

Once the Applicants made an Application to dispute the Notice alleging it has been given in bad faith, the onus is on the Landlord to prove the Notice was issued for its stated purpose.

Section 51 of the Act provides as follows:

*Tenant's compensation: section 49 notice*

51 (1) *A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(2) *In addition to the amount payable under subsection (1), if*

*(a) 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*

*(b) 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,*

*The landlord, or 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.*

I find the Respondents failed to offer a credible reason why the alleged repairs, which were still incomplete as of September 2010, took at least seven months. I do not accept the testimony of the Respondents, and they have offered no proof, that they felt scared or threatened by the Applicants, so that they never moved in.

I accept the testimony of the Applicant that the Respondents never intended to move into the rental unit, causing reasonable doubt as to the reasons for the notice to end the tenancy. I do not find the testimony and evidence of the Respondents are credible and that on a balance of probabilities an ulterior motive existed whereby the Respondents ended the tenancy.

I find that the Applicants have established a total monetary claim of **\$2,940.00** comprised of \$2,890.00, representing the amount of \$1,445.00 monthly rent, doubled, and the \$50.00 fee paid by the Applicants for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Applicants are granted a monetary order for \$2,940.00.

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: October 05, 2010.

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Dispute Resolution Officer