



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to the tenant's application seeking a monetary order for compensation for damage or loss in the sum of \$25,000.00 and recovery of the filing fee of \$100.00 paid for this application.

All parties appeared at the hearing and gave evidence under oath.

### Issues(s) to be Decided

Is the tenant entitled to the Orders sought?

### Background and Evidence

The Tenancy Agreement submitted in evidence shows that this tenancy began on January 1, 2010. On December 17, 2007 the tenant was served with a 1 month Notice to End Tenancy which he disputed.

The tenant applied to set aside the Notice to End Tenancy, for the return of personal property and for compensation for damage or loss under the Act. In a decision rendered January 28, 2008 the tenant's Applications were dismissed except his application seeking to set aside the Notice to End Tenancy. That Notice was set aside and the tenancy continued.

The tenant was served with a further Notice to End Tenancy for landlord's use dated February 28, 2008 which the tenant also disputed. In that application the tenant also claimed a monetary award for compensation for damage or loss under the Act and an order that the landlord make repairs. That application was heard on March 31, 2008. At that hearing the parties settled the matter between themselves agreeing to end the tenancy on June 30, 2008. An Order of Possession was issued effective June 30, 2008 and the parties agreed to work together to make the duration of the tenancy peaceful and cooperative. However after having dropped their claims and agreeing to end the tenancy on June 30, 2008, on June 28, 2010, the tenant made this further application.

With respect to the tenant's claim for compensation because the landlord did not use the property for the purpose stated on the Notice to End Tenancy for Landlord's Use, the parties agree that, as required by Section 49 of the Act when such a notice is issued, the tenant received one month rent in compensation. However, now that the tenancy has ended the tenant says the landlord did not use the rental property for her own use within 6 months and for at least 6 months. The tenant therefore seeks compensation therefore and in his application the tenant states he is seeking:

1. A refund of 1 year worth of rent paid that this rental unit totalling \$15,600.00;
2. The rental differential between the rent he now pays and the rent he paid at this rental unit over a period of 2 years totalling \$16,800.00;
3. Moving expenses of \$800.00;
4. "Smashed furniture" of \$300.00; and
5. Outstanding utilities of \$1,785.00.

Together these sums total \$35,285.00 however, the tenant submitted that he has reduced his total claim to \$25,000.00 being the monetary jurisdiction of the Residential Tenancy Branch.

The landlord responded that the tenant has already made claims for compensation for damages and loss and those claims have been dismissed. The landlord testified that she has already paid one month's free rent in compensation to the tenant and that is all

that the tenant is owed. The landlord says her son moved into the rental unit but she agrees he only stayed for a month.

### Analysis

Under Section 51(1) of the Act when a landlord issues a 2 month Notice to End Tenancy for landlord's use a tenant is entitled to an equivalent of one month's rent in compensation. The evidence of both parties shows that in keeping with Section 51(1) the tenant did receive one month free rent.

However, in addition to the compensation under Section 51(1) the Act also states:

- 51** (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 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.

Therefore, in addition to the one-month's rent there is further compensation to be paid in situations where landlords do not accomplish that for which they issued the Notice to End Tenancy. Prior to the changes to the *Residential Tenancy Act* in 2004, there were no compensatory provisions in these situations. Tenants had to make and prove a claim for expenses and other damages. However, the Act changed in 2004 Section 51(2) was enacted setting a specific amount of compensation payable by the landlords to tenants in these situations thereby eliminating the need for the tenants to file and prove a claim. While that Act does not say further compensation cannot be sought and awarded, clearly, the legislators had already anticipated the need to compensate

tenants when their tenancies ended for landlord's use and they set a limit to that compensation; that is the equivalent of two month's rent.

In this case, the evidence is that the landlord's son did move into the rental unit but he stayed only a month. Section 51(1) is clear that in situations where the rental unit is not used for that stated purpose for ending the tenancy for at least 6 months beginning within a reasonable period after the effective date of the notice, then the tenant is entitled to further compensation. The Act sets that compensation at the equivalent of two months. In this case the tenant's rent was \$1,300.00 per month and I therefore find he is entitled to compensation in the sum of \$2,600.00.

With respect to the balance of the tenant's claims I refer to the doctrine of *res judicata*. *Res judicata* prevents an applicant from getting another day in court after the first claim is concluded by giving a different reason for the recovery of damages. The doctrine provides that the parties to an action are bound not only as to every matter which was offered but as to any other matter **which might have been offered**. A final judgment on the merits bars further claims by the same parties based on the same cause of action. In short, *res judicata* means the first judgment is conclusive not only on all matters which were actually litigated **but on all matters which could have been litigated**. Applicants cannot bring their claims back again and again claiming compensation for things they did not include in their first claim or by rewording their claims to make them appear to be different when, as in this case, they amount to the same claim that is compensation for damage or loss arising from this tenancy.

The only part of this claim which could not have been dealt with in a previous application is the claim for Section 51(1) compensation. This is, of course, because the tenant could not have proven that the landlord or a family member did not move into the rental unit for a sufficient period of time until after the tenancy ended. I have therefore allowed the tenant's claim in this regard.

However, while the landlord now words his claims differently, that is he now says he is claiming compensation for loss of quiet enjoyment, or losses because the tenancy ended or because he had to pay higher rent, or because his furniture was smashed his furniture or because he is owed utility costs, or because the landlord committed fraud, or for any other reason, these claims all amount to a further claim for compensation for damage or loss under the Act and the tenant has already made that claim and that claim has already been decided. The tenant's claim for \$22,400.00 in compensation for these claims is therefore dismissed.

### **Conclusion**

The tenant is provided with a monetary Order in the sum of \$2,600.00 payable by the landlord to the tenant. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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