



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

The tenants seek a monetary order for compensation for damage or loss and recovery of the filing fee. Total sought including the filing fee is \$7,000.00.

Both parties attended the hearing and gave evidence under oath.

### Issues(s) to be Decided

Are the tenants entitled to the Orders sought?

### Background and Evidence

According to the tenancy agreement this tenancy began on March 23, 2009 and was to end at the end of 12 months on March 31, 2010 at which time the tenancy "...may continue on a month-to-month basis or for another fixed length of time". On March 9, 2010 the parties entered into an addendum to the Tenancy Agreement in which they agreed to extend the fixed term for another 6 months ending on September 30, 2010, the addendum confirmed all of the other terms and conditions of the original tenancy agreement.

The tenants say that the landlords advised them in August 2010 that they were going to put the rental unit on the market. The tenants say they hesitatingly agreed that they could move out as early as October 31, 2010 but no written notice was given. On August 25, 2010 the tenants say they receive an email from the landlord confirming they understood that their plans were to stay until October 31, 2010 and asking for confirmation of that this was the case. The tenants submit that this was "...an extrapolation on their part, based on assumed intentions". The tenants submit that on September 30, 2010 the tenants received an email from the landlords stating that the landlords were unable to extend the lease on a month-to-month basis past the end of the expiry date on September 30<sup>th</sup> and they asked the tenants to vacate by September 30, 2010. In the end, the tenants say they regrettably and reluctantly vacated the property. The tenants say they felt pressured and harassed into doing so.

They are requesting \$7,000.00 representing 2 months' rent. In their submissions "Not just for reasons violating the Two Months' Notice criteria, under section 12.8 but also as compensation for the situation as a whole, the violations and the ultimate outcome".

The landlords submit that in mind August of 2010 they were informed by one of the tenants that because another tenant (GR) had found accommodations for October 1, 2010 and that as the rest of the tenants could not afford to remain and they would not be renewing the lease that had been extended for 6 months and was to expire September 30, 2010. Upon receiving this information the landlords say they felt they had 2 options either to find new tenants or sell the property. They decided to put the property on the market and the tenants vacated the property. The landlords say a final move-out inspection was performed on October 3, 2010 and on October 14, 2010 they returned the full security deposit to the tenants.

### Analysis

Under Section 49 of the *Residential Tenancy Act*, a landlord may end a tenancy for landlord's use of property. In such a case a landlord would issue a 2 Month Notice to End Tenancy for Landlord's Use in which case the landlord would be responsible for paying compensation as provided for in Section 51 of the Act:

51 (1) A tenant who receives a notice to end a 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

However, in this case, the evidence is that while the landlords shared with the tenants that they were considering selling the rental unit there is no evidence that they issued a Notice to End Tenancy. Until a landlord issues and serves a Notice to End Tenancy in accordance with the Act the tenancy continues. This remains so even in the cases of a fixed term tenancies where the option to continue the tenancy on a month-to-month basis is selected in the standard form of tenancy agreement. Only in cases where the parties select that the tenancy "...ends and the tenant must move out of the residential unit..." at the end of the fixed term does the fixed term end. While the tenants say they were pressured and harassed into leaving I find insufficient evidence of this. I find that the landlords told the tenants that they may wish to sell the rental unit and I find this is insufficient to be termed as harassment. The evidence shows that the tenants decided to vacate although no Notice was served. I find that this was their choice.

The tenants' application for compensation is therefore dismissed.

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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