



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 damage or loss under the Residential Tenancy Act (the “Act”), regulations or tenancy agreement and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Issue(s) to be Decided

Have the landlords breached the Act or tenancy agreement, entitling the tenants to a monetary order for money owed or compensation for damage or loss and to recover the filing fee?

### Background and Evidence

This tenancy started on February 1, 2009, for a one year, fixed term, and continued thereafter on a month to month basis, until it ended on August 6, 2010. Beginning monthly rent was \$1,850.00, and increased to \$1,909.00 after one year.

The tenants testified and submitted evidence that the landlords issued a 2 Month Notice to End Tenancy (the “Notice”) on May 3, 2010, for an effective move-out date of July 31, 2010.

The tenancy ended on August 6, 2010, as result of the Notice.

The tenants submitted that they have not received from the landlords the equivalent of one month’s rent which was payable under the tenancy agreement as a result of being issued the 2 Month Notice.

The tenants' monetary claim is in the amount of \$1,909.00, which was the rent at the time the Notice was issued.

In response, the landlords submitted they were accommodating to the tenants and did them a favour by offering them the use of another suite owned by them, this time on a month to month basis, which in effect, amounted to a mutual agreement to end the tenancy.

The landlords, however, admitted that they have not paid the tenants compensation equivalent to one month's rent.

### Analysis

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

Although evidence concerning the parties' subsequent tenancy was submitted and briefly argued, only the evidence and testimony relevant to the issues and findings of the tenancy in question are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenants in this case, have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 51 of the *Act* provides as follows:

*(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.*

The tenants testified and the landlords confirm that the tenants have not received compensation equivalent to one month's rent after receiving the Notice which was issued to them under authority of Section 49 of the *Act*, either by direct payment or withholding rent for a month.

I therefore find that the tenants have established a monetary claim in the amount of **\$1,959.00**, comprised of the equivalent to one month's rent of \$1,909.00 and the filing fee of \$50.00 paid by the tenants.

I am enclosing a monetary order for \$1,959.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

Conclusion

The tenants are granted a monetary order in the amount of \$1,959.00.

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: August 08, 2011.

---

Residential Tenancy Branch