



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only. The landlords did not attend.

The tenant provided documentary evidence showing that each landlord was served with notice of this hearing and the details of this dispute by registered mail and that each one was refused by the respondents.

This combined with the evidence submitted by the tenant showing the landlord's forcible eviction of the tenant without consideration for their obligations under the *Residential Tenancy Act (Act)*, I accept the landlords were served in accordance with the *Act*. I also find the landlord's refusal of the service of documents is an overt act by the landlord to circumvent the Dispute Resolution process.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for ending a tenancy for landlord use; for not using the rental unit for the stated purpose when ending a tenancy for landlord use; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant testified the tenancy began on November 1, 2009 as a month to month tenancy for the monthly amount of \$650.00 due on the last day of each month and that a security deposit of \$325.00 was paid on October 20, 2009.

The tenant testified that he lived in a basement suite of the house and one of the male landlords lived upstairs. The tenant testified that the basement suite had a separate kitchen and bathroom that he shared with another tenant and not with the landlord who lived upstairs.

The tenant provided a copy of a letter from the female landlord dated March 31, 2011 advising that "We will be moving back into our home on May 1<sup>st</sup>, 2011 and as such we hereby give you 30 (THIRTY) days notice from today's date. You are required to vacate the premises and remove all your possessions from the property by April 30<sup>th</sup>, 2011.

The tenant testified the residential property had been for sale for several months, he thought 10 but was uncertain, and that while it was for sale the landlord had arranged several viewings without notice. The tenant also testified that on or about May 30, 2011 a sold sign was placed on the front of the rental property. He also states he confirmed with the landlords' realtor that the male tenant was still living in the upper unit in late June 2011.

The tenant also provided a DVD recording documenting the events of April 30, 2011. The tenant testified that he had received a text from the landlord who lived upstairs the day before that the tenant had better be moved out or the other male landlord would be waiting to move the tenant's belongings out onto the street. In anticipation of difficulties with the landlord the tenant prepared to record the events by way of the submitted DVD.

The recording shows one of the male landlord's breaking down the door of the tenant's room; yelling and swearing at the tenant; and throwing papers at the tenant. The recording also shows the female landlord pushing into the room and removing some of the tenant's belongings then returning and physically assaulting the tenant.

The tenant testified that he had previously served the landlords with a notice of a Residential Tenancy Branch Dispute Resolution hearing to deal with the validity of the 30 day notice the landlord's issued that was scheduled for May 2, 2011 (two days after the recorded events).

The tenant testified and provided tracking numbers to confirm that he provided the landlord with his forwarding address on May 5, 2011 by registered mail and that he has not received any refund from the landlord to date.

The tenant seeks the following compensation:

Description	Amount
Aggravated entry and harassment	\$1,500.00
1 Month Compensation – notice to end tenancy for landlord's use	\$650.00
Return of double the security deposit	\$650.00
Storage	\$180.00
Moving time and cost to find a new place	\$396.00
<b>Total</b>	<b>\$3,376.00</b>

### Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends to occupy the rental unit. Section 49(2) states that such a notice has an effective date that is not earlier than 2 months after the date the tenant receives the notice. The notice must be served to the tenant the day before in the month that rent is payable under the tenancy agreement.

As such, a notice to end tenancy for the landlord to move into the rental unit that was issued (dated) March 31, 2011, and in conjunction with the due date of rent being the last day of each month, would have an effective date of June 30, 2011.

As a result, I find the landlords forcibly, and in direct contravention of the *Act*, removed the tenant from the rental unit two months prior to any potential effective date of a notice under Section 49.

Section 51 of the *Act* stipulates that should a landlord end a tenancy for their own use of the property the tenant is entitled to compensation in an amount that is equivalent to one month's rent before the effective date of the notice.

I accept the tenant's testimony, and in the absence of any evidence or testimony from the landlord, that the landlord failed to provide compensation equivalent to one month's rent to the tenant for the notice to end tenancy as is required under Section 51. I find the tenant is entitled to compensation in the amount of 1 month's rent.

As this compensation is intended to be in recognition of costs associated with moving, I dismiss the portion of the tenant's Application for costs associated with storage; moving time and finding a new place.

Section 51 also states that should the rental unit not be used for the stated purpose for at least 6 months beginning within a reasonable time period after the effective date of the notice the landlord must pay the tenant the equivalent of two months' rent.

I accept the tenant's testimony, and in the absence of any evidence or testimony from the landlord, that the landlord sold the rental property within 1 month of the tenant being forcibly and physically evicted from the rental unit. As such, I find the landlord used the rental property in a manner that was not consistent with that noted in the letter sent to the tenant providing the tenant with "notice" of the tenancy ending for the landlord's use.

I therefore find, the tenant is entitled to compensation in the amount equivalent to two months' rent.

Section 38(1) of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution seeking to claim against the security deposit. Section 38(6) says that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the tenant's testimony that he provided the landlord with his forwarding address by registered mail on May 5, 2011. Section 90 states that a document sent by registered mail is deemed to be received by the party on the fifth day after being mailed (May 10, 2011). As a result, I find the landlord had until May 25, 2011 to return the tenant's security deposit or file an Application for Dispute Resolution.

As the landlord has failed to do either, I find the landlord has failed to comply with Section 38(1) and the tenant is therefore entitled to double the amount of the security deposit.

In relation to the tenant's claim for compensation for aggravated entry and harassment, I note that Residential Tenancy Policy Guideline #16 states that "in addition to other damages an arbitrator may award aggravated damages." Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour.

When considering aggravated damages, I must give consideration to the following points:

1. The damages must be caused by a deliberate or negligent act or omission of the wrongdoer; and

2. The damages must be sufficiently significant in depth that they represent a significant influence on the wronged person's life.

I find the landlord's actions of forcibly removing the tenant with notice, while both parties were aware of the hearing two days later to determine the validity of the landlord's notice to be a deliberate action on the part of the landlord. I also find that those actions prevented the tenant from exercising his legislatively protected rights under the *Act* and catapulted the tenant out of his home without warning and two months premature of a legally authorized date to end the tenancy.

For these reasons, I find the tenant is entitled to aggravated damages in the amount of \$2,150.00 as compensation for the aggressive and violent behaviour exhibited by the female landlord and one of the male landlords and related stress and inconvenience.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,800.00** comprised of \$650.00 Section 49 notice compensation; \$1,300.00 Section 51 compensation for using the rental property for a different purpose; \$650.00 double the amount of the security deposit; \$2,150.00 aggravated damages and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: September 12, 2011.

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Residential Tenancy Branch