



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by one of the tenants, the two landlords and their agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for monies owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 51, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began sometime in the summer of 2009 as a month to month tenancy for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid.

The parties also agreed the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on March 31, 2011 with an effective vacancy date of May 31, 2011 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant confirmed that they vacated the rental unit on or before the effective date and that the landlord did provide compensation equivalent to one month's rent as is required under the *Act* when a landlord seeks to end a tenancy for personal use.

The tenant testified he still lives in the area; that the residential property remains for sale (as it had been for some time during the tenancy) and until he had submitted his Application for Dispute Resolution there had been little or no activity at the dispute address but that recently it appears someone is staying there and work is being completed on the property.

The landlords confirmed with their testimony that they have been trying to sell the house for some time and that they had had reports from their realtors that the tenants were difficult to deal with in trying to arrange showings to potential purchasers.

The landlords also testified that they knew the house required substantial work, particularly in regards to the structure of the house. The landlords had intended to have the female landlord's brother stay in the house and complete the repairs that would require the house to be vacant. In addition as the brother was from out of town, he would need a place to stay for the duration of the work.

The landlords testified that at this time they are not sure if the brother will remain in the community and take up full time residence in the rental unit or not. They state they will need to reassess what they will be doing with the house based on the inability over the course of the last year or so to sell the property.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 51(2) states that should steps not be 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 the rental unit is not use for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline #2 states that the "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

From the landlords' testimony, I find the landlords intended, when they issued the notice to end tenancy, to make significant repairs to the rental property to enhance its saleability and to prevent what they saw as interference on the part of the tenants relating to the showing of the rental unit to potential purchasers.

I accept that as a result of the landlords' intent to make these repairs and their plan to have the female landlord's brother complete the repairs they required a location for him to live during the work period. As a result, I find the use of the property to be occupied by the landlord or a close family member was secondary to the above note reasons.

In addition I find the landlord has not complied Section 51(2) in that they state, 5 ½ months after the effective date of the Notice to End Tenancy, they are unsure as to what they will do with the rental unit including whether or not the female landlord's brother will live there and even though the unit is currently occupied by the landlord's

brother, at this time it is in relation to the repairs and not in relation to an ongoing occupancy.

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,450.00** comprised of \$2,400.00 compensation owed and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants 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: October 12, 2011.

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Residential Tenancy Branch