

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord did not attend this hearing, although I waited until 11:20 a.m. in order to enable him to connect with this hearing. The tenants both attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenants testified that they received the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on March 29, 2011. As was noted in an April 28, 2011 decision, the landlord's 2 Month Notice was issued because the landlord planned to occupy the rental unit. The tenants noted that the Dispute Resolution Officer dismissed their application to cancel the landlord's 2 Month Notice because he was satisfied that the landlord did in good faith intend to occupy the rental unit.

The tenants testified that they sent the landlord copies of their original dispute resolution hearing package and their amended application for dispute resolution by courier on July 14, 2011. They testified that they sent this package by courier as their application occurred during a period when Canada Post registered mail service was delayed due to a postal strike. Over that period, the Residential Tenancy Branch (the RTB) accepted service by acceptable alternative means including courier services because Canada Post's registered mail service was not functioning normally. The tenants provided the UPS courier Transaction ID number and testified that they are certain that the landlord received a copy of their dispute resolution hearing package.

Although the landlord did not attend this hearing, I note that he did send a detailed written and photographic evidence package in opposition to the tenants' application, received by the RTB on September 6, 2011. The tenants also received a copy of the landlord's written evidence package. This package included specific references to the tenants' application, including the correct file number and a copy of the Notice of Hearing sent to the landlord in the tenants' dispute resolution hearing package. Based on the tenants' testimony regarding service of the dispute resolution hearing package and the very clear written evidence supplied by the landlord that he was informed of this hearing, I am satisfied that the landlord has been given an adequate opportunity to attend this hearing and make representations regarding the tenants' application for

dispute resolution. I find that the tenants have adequately informed the landlord of this application for dispute resolution.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in his notice to end tenancy (i.e., landlord's use of property)?

Background and Evidence

This month-to-month tenancy commenced on September 1, 2010. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. Although the tenants paid a \$500.00 security deposit when they started this tenancy, the tenants testified that the landlord has returned their security deposit.

The tenants testified that previous decisions of DROs on March 11, 2011 and April 28, 2011 have resolved their previous applications for monetary awards for repairs and their entitlement to withhold their rent for the last month of their tenancy in accordance with section 51(1) of the *Act*.

The sole issue before me is the tenants' application for a monetary award of \$2,000.00 pursuant to section 51(2) of the *Act*. The tenants maintained that the landlord did not in fact move into the rental unit after they vacated the rental unit in early June 2011. They testified that the landlord rented the premises to new tenants approximately two months prior to this hearing.

Analysis

Section 51(2) of the *Act* reads in part as follows:

**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.*

I have considered the tenants' evidence and the landlord's written and photographic evidence. Some of the landlord's evidence involved the landlord's allegations that the tenants did not pay rent in a timely fashion or did not pay all of their rent. Other portions of the landlord's evidence addressed the expenses that the landlord incurred arising out of this tenancy and damage attributed to the tenants. The landlord also maintained that repairs that they undertook were costly and that the house was vandalized in July 2011 as they were repairing it and that their contractors were not able to enter the premises.

Little of the landlord's evidence addresses directly the tenants' assertion that the landlord has not moved into this rental unit with his wife as he stated he would on April 27, 2011 at the last dispute resolution hearing. The sole ground for the DRO's dismissal of the tenants' application to cancel the landlord's 2 Month Notice was that he was satisfied that the landlord was acting in good faith in committing to move into the rental premises. While there may have been setbacks caused by repairs and vandalism in July 2011, the landlord has not provided any explanation as to why he has failed to use the premises for the purposes stated in his 2 Month Notice by late October 2011. The tenants entered undisputed oral testimony that the premises are now occupied by new tenants and not the landlord.

Based on a balance of probabilities, I find that the tenants have demonstrated that they are entitled to a monetary Order of double their monthly rent pursuant to section 51(2) of the *Act* because the landlord has not used the rental unit for the stated purpose in the landlord's 2 Month Notice. Four and one-half months have passed since the tenants vacated the rental unit. I consider this to have been ample time to allow the landlord to fix what needed repair and occupy the premises himself as he committed to do in April 2011. He has not done so and, based on the undisputed testimony of the tenants, he may have rented the premises to new tenants.

For the reasons outlined above, I find that the tenants are entitled to compensation as set out in section 51(2) of the *Act*. I therefore find that the tenants are entitled to the recovery of the equivalent of two months rent. As the normal monthly rent was set at \$1,000.00, I find that the tenants are entitled to a monetary Order in the sum of \$2,000.00 as claimed.

### Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,000.00.

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.