



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The tenants and an agent for the landlord attended the conference call hearing. Both parties provided evidence in advance of the hearing, each gave affirmed testimony, and the parties were given the opportunity to cross examine each other on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

This month-to-month tenancy began on September 1, 2011 and ended when the tenants vacated the rental unit during the weekend of February 25, 2012. Rent in the amount of \$1,050.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from the tenants.

The first tenant testified that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by placing the notice in the mailbox of the rental unit. A copy of the notice was provided by the tenants prior to the hearing, and it is dated February 1, 2012 and contains an effective date of vacancy of April 1, 2012. The tenant is not certain when it was left in the mailbox, but believes it was on or about February 1, 2012. The tenant testified that the landlord issued the notice because the landlord was dating a sibling of one of the tenants, and the relationship had broken down. The landlord wanted the tenants to move out. The reasons for ending the

tenancy as listed on the notice to end the tenancy are: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse," and, "The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property."

The tenant also testified that the landlord was given written notice that the tenants intended to move from the rental unit earlier than the date set out in the landlord's notice to end the tenancy. The written notice is in the form of a text message, which was replied to by the landlord. The tenants provided printed copies of those text messages to the Residential Tenancy Branch and to the landlord prior to the hearing. The message referred to is dated February 20, 2012 and states, "Just wanted to tell you that I have found a place for the month of March. We'll be out before the first." The response from the landlord is also dated February 20, 2012 and it says, "K. Cheers for letting me know."

The tenant further testified that rent for the month of February, 2012 was paid to the landlord in full, and the tenants have not received compensation as required under the *Residential Tenancy Act*. The tenants claim \$1,050.00 from the landlord in addition to the \$50.00 filing fee for the cost of the application.

The landlord's agent testified that an error exists on the notice to end tenancy; the landlord did not intend to convert the rental unit for use by a caretaker, manager or superintendent of the rental unit. The landlord moved into the rental unit on March 1, 2012. After the landlord and the tenant's sibling separated, the landlord was required to move in with parents until the landlord could move into the rental unit.

The landlord's agent also testified that the tenants and the landlord had agreed to end the tenancy.

The landlord's agent further testified that the tenants had agreed to pay for utilities, but did not do so and owe the landlord about \$400.00.

### Analysis

The *Residential Tenancy Act* states that a landlord who gives a tenant notice to vacate a rental unit for landlord's use of property must pay the tenant the equivalent of one month's rent. The notice to end tenancy also contains information for landlords and tenants with respect to the *Residential Tenancy Act*. The notice, on page 2 states:

- On or before the effective date of this Notice, the landlord must pay the tenant an amount equal to one month's rent payable under the tenancy agreement.
- If this Notice is ending a periodic tenancy, the tenant may withhold the last month's rent instead of being paid compensation.
- If a tenant has already paid the last month's rent, the landlord must refund the rent as the compensation.
- If the landlord does not take steps toward the purpose for which this Notice was given or if the unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of this Notice, the landlord or purchaser must pay the tenant an additional amount equal to double the monthly rent paid under the tenancy agreement.
- If this is a periodic tenancy, a tenant who receives this Notice can give 10 days notice and move out early. The landlord must still pay the tenant one month's rent as compensation.

The *Act* also states that a landlord may end a tenancy for landlord's use of property by giving the notice to end the tenancy effective on a date that must be no earlier than 2 months after the date the tenant receives the notice, and must be issued the day before the day rent is payable under the tenancy agreement. In this case, the landlord did not issue the notice to end tenancy the day before the date rent was payable under the tenancy agreement. The testimony before me is that rent was payable on the 1<sup>st</sup> day of each month, and the parties testified that the notice was left in the mailbox of the rental unit on or about February 1, 2012 and the notice is dated February 1, 2012.

I find that the tenants provided the landlord with written notice, by way of text message which was responded to by the landlord, of the tenants' intention to vacate the rental unit prior to the effective date of the landlord's notice. The tenants' notice was given on February 20, 2012. The tenants paid rent up to the end of February, 2012, and were obligated under the *Act* to pay rent for one day, March 1, 2012, being 10 days after the date of the tenant's notice. However, the landlord also issued the notice to end tenancy a day later than required by the *Act*. Therefore, I find that the landlord is obligated to pay to the tenants the equivalent of one month's rent payable under the tenancy agreement. The landlord's agent testified that the parties had agreed to ending the tenancy, however the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, and is therefore required under the *Act* to provide the tenants with compensation.

With respect to the testimony of the landlord's agent that the tenants owe the landlord money for utilities, the tenants did not agree to the amount requested by the landlord's agent during the course of the hearing, and I have no application before me by the

landlord for a monetary order. In the event that the parties cannot negotiate a settlement for that issue, the landlord will be at liberty to make an application for dispute resolution.

Since the tenants have been successful with the application, the tenants are also entitled to recover from the landlord the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

This order is final and binding on the parties and may be enforced.

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: June 08, 2012.

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Residential Tenancy Branch