



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:44 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that on or about September 14, 2012, she received the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the 2 Month Notice) posted on her door. She entered into written evidence a copy of the 2 Month Notice. I am satisfied that the 2 Month Notice was issued in accordance with the *Act* and formed the basis for the termination of this tenancy

She testified that she sent the landlord a copy of her dispute resolution hearing package by registered mail on November 16, 2012. She provided a copy of the Canada Post Tracking Number and the returned envelope for this registered mailing. She testified that she had asked the landlord for his mailing address, but he did not give her any mailing address other than the dispute address. She entered into written evidence and CD evidence that the landlord continues to pick up his mail at the dispute address. She testified that the landlord carries on his business as a landlord using the dispute address as his mailing address. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with a copy of the tenant's dispute resolution hearing package on November 21, 2012, the fifth day after its registered mailing.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This periodic tenancy commenced on June 1, 2006. The tenant testified that the initial monthly rent was set at \$750.00 per month, payable in advance on the first of each month. She testified that by November or December 2006, the monthly rent reduced to \$650.00 per month due to a concern she raised about the services and facilities she was receiving in this tenancy. She said that since that time and until she vacated the rental unit by November 1, 2012, she was paying \$650.00 in monthly rent. She paid a \$375.00 security deposit when she moved into the premises in 2006. She testified that the landlord returned all of her security deposit to her when she vacated the rental unit.

In accordance with the provisions of the *Act*, the tenant said that she advised the landlord that she would be vacating the rental unit before the November 15, 2012 effective date identified in the landlord's 2 Month Notice. The tenant testified that the landlord allowed her to stay rent-free in the rental unit for October 2012.

The tenant entered undisputed evidence that no one has lived in the rental unit she vacated for landlord's use of the property since she vacated the premises by November 1, 2012. She said that the landlord told her that he was moving back to his home country. She understands that the landlord is trying to sell this rental property.

The tenant's application for a monetary award of \$1,550.00 was for the issuance of a monetary award equivalent to two full month's rent due to the landlord's failure to comply with the purpose of the 2 Month Notice.

### Analysis

This tenancy ended on the basis of the landlord's issuance of a 2 Month Notice pursuant to section 49 of the *Act*. I find that the landlord complied with the provisions of section 51(1) of the *Act* by allowing the tenant to vacate the rental unit sooner than the effective date identified on the 2 Month Notice and by allowing the tenant to stay in the rental unit rent-free for the last month of her tenancy.

The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reasons for seeking an end to this tenancy:

- *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...*

Section 51 (2) of the *Act* also provides that if 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 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

At the time the tenant applied for dispute resolution on November 14, 2012, I am not satisfied that sufficient time had passed to establish that the landlord was not intending to occupy the rental unit for landlord's use of the property. However, over 3/12 months have now passed since the tenant vacated the rental unit. On the basis of the tenant's undisputed evidence, I find that the landlord has not taken action within a reasonable period of time to implement the stated purpose of the landlord's 2 Month Notice. Under these circumstances, I find that the tenant has established that she is entitled to a monetary award equivalent to two month's rent that she was paying for this tenancy.

I find that the tenant's entitlement to a monetary award should be limited to double the actual monthly rent that she testified she was paying and the landlord was receiving for the final six years of her tenancy. Pursuant to sections 51(2) and 67 of the *Act*, I issue a monetary award in the tenant's favour in the amount of \$1,300.00, to reflect the landlord's failure to abide by the terms of his 2 Month Notice. As the tenant has been successful in her application, I allow her to recover her filing fee from the landlord.

### Conclusion

I issue a \$1,350.00 monetary Order in the tenant's favour under the following terms which enables the tenant to recover double her monthly rent and her filing fee:

Item	Amount
Monetary Award Pursuant to s. 51(2) of the Act Equivalent to Double the Monthly Rent (2 x \$650.00 = \$1,300.00)	\$1,300.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,350.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with one 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*.

Dated: February 18, 2013

---

Residential Tenancy Branch

