



# 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 tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants. The landlord's former property manager attended solely to deal with the issues noted below regarding the naming of the property management company as a respondent.

The tenants provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 8, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

The tenants acknowledged receiving the property management company's contact information for the landlord. They also testified that the cheque they received from the landlord for the original compensation under Section 51 was sent from the address used to serve the landlord their hearing documents. Based on the documentary evidence and testimony of the tenants, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

The tenants had originally named the property management company that had managed the property for the landlord as the respondent on their Application for Dispute Resolution. Based on an email sent to the tenants from the property management company on February 6, 2013 the tenants amended their Application on March 8, 2013 to include the actual landlord's name.

The property management firm provided documentary evidence, in the form of an email from the landlord dated November 23, 2012 to the property management company terminating the contract for the property management company to manage the dispute address effective November 30, 2012.

For these reasons, I amend the tenants' Application to exclude the property management company as a named respondent.

### Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to a monetary order for money owed and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Act*.

### Background and Evidence

The tenants submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on March 24, 2010 for a two year fixed term tenancy beginning on April 1, 2010 that converted to a month to month tenancy on April 1, 2012 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$575.00 paid on March 24, 2010; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued October 26, 2012 with an effective vacancy date of December 31, 2012 citing the rental unit will be occupied by the landlord; his spouse; or a close family member.

The tenants submit that they vacated the rental unit as of November 30, 2012 and as of December 27, 2012 the property had been listed with another property management company and was up for rent for \$350.00 more per month than what the tenants had been paying.

The tenants provided photographic evidence of the rental unit that shows a "For Rent" sign in the rental unit window showing a different property management company as responsible; a listing from the property management site with photographs of the rental unit listing the property available for rent for \$1,500.00 and noting the listing was posted on December 27, 2012.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. 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;

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

The Section goes on to say 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 unit is not used for the 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 equivalent of double the monthly rent payable under the tenancy agreement.

Based on the documentary evidence submitted by the tenants I accept the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property in accordance with Section 49 of the *Act*.

I find, based on the photographic evidence submitted, and undisputed, that the landlord had made the rental unit available for rent 3 days prior to the effective date of the 2 Month Notice to End Tenancy. As a result, I find the landlord has failed to use the rental property for the stated purpose that he gave when ending the tenancy and as such the tenants are entitled to compensation equal to 2 months rent under their tenancy agreement, pursuant to Section 51.

#### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,350.00** comprised of \$2,300.00 compensation and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails 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: March 20, 2013

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Residential Tenancy Branch

