



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are 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?

### Background and Evidence

The parties agree that this tenancy started on December 15, 2011 for a fixed term tenancy which was not due to end until November 31, 2012. Rent for this unit was \$1,975.00 per month due on the first day of each month.

The tenant attending the hearing testifies that there was an ongoing history of the landlord trying to evict the tenants and this last Two Month Notice was the final resort to have the tenants evicted. On January 27, 2012 the landlord issued a hand written eviction notice; on June 29, 2012 the landlord issued a Two Month Notice to End Tenancy; on July 14, 2012 the landlord issued a One Month Notice to End Tenancy. These Notices were overturned. On August 29, 2012 the landlord served the tenants with another final Two Month Notice to End Tenancy. This Notice stated that the rental unit will be occupied by the landlord, the landlord spouse or a close family member of the landlord or the landlord's spouse. The Notice also stated that the landlord has permits in place to demolish or renovate the unit that required vacant possession. This Notice had an effective date of October 31, 2012.

The tenant testifies that as this was a fixed term tenancy which was not due to expire until November 30, 2012 the landlord had issued this Notice prematurely so the tenants filed an application to dispute the Notice. The tenant testifies that they did not want to prevent the landlord from returning to live in her property but disputed the Notice on the grounds that the fixed term of their tenancy had not yet expired.

The tenant testifies that a hearing was held on October 04, 2012. At this hearing a settlement was reached between the parties. The tenants agreed to vacate the rental unit and withdraw their application to cancel the Notice. It was agreed that the tenants would vacate the unit on December 31, 2012; the tenants would be compensated an amount equal to two months' rent which was satisfied by the tenants not paying the rent for November and December. Part of this compensation being the compensation allowed pursuant to s. 51 of the *Act* for the Two Month Notice.

The tenant testifies that after they moved out they had cause to drive by the unit in their day to day business and saw no sign that the landlord had moved into the unit. Another application was filed by the tenants to get their security deposit back from the landlord and the tenants were successful with that application. At that hearing it appeared that the landlord had not moved into the rental unit as the landlord had stated that she had

only stayed there for a few nights but as it was too noisy in the unit the landlord stayed in her own home. The tenant testifies that the landlord had not tried to sell or rent their other property and continue to live there.

The tenant testifies that in a letter that accompanied the Two Month Notice the landlord had indicated that significant renovations needed to be done to the rental unit. This involved removing the carpets, finishing the floors, painting the unit and bathroom renovations. The tenant testifies that from what they have since seen the landlord has only removed carpets and painted the unit. None of this work would have required vacant possession of the rental unit. No significant renovations have been done to the bathrooms as shown on the photographs on the realtor's site after the landlord listed the home for sale. The tenant testifies that the home was listed for sale around February, 2013 and an open house was held on February 23, 2013. The house was sold in July, 2013.

The tenant testifies that the landlord acted in bad faith in issuing a Two Month Notice to End Tenancy for renovations and for the landlords own use. The tenants seek to recover compensation from the landlord equal to two months' rent as stated under s. 51 of the *Act* as the landlord has not renovated the home to an extent that required vacant possession and has not moved into the home.

The landlord testifies that in June 2012 they were trying to sell the house as they could not afford to keep two homes. The landlord testifies that they could not sell it then due to the condition the tenants kept the house in. The house was taken off the market at that time and the landlord thought they would sell their current home and move into this home.

The landlord testifies that after the tenants moved out the landlord stayed in the home for a few days but found it was too noisy with traffic. As the landlord has a disabled son this would not work for her son so they continued to live in the other house.

The landlord testifies that the house was extensively painted due to the colours the tenants had painted the house. The carpeting was also removed and new baseboards fitted. The floors were sanded and refinished.

The landlord testifies that her interpretation of the previous decision is that the tenants mutually agreed to end the tenancy and then after the tenants moved out it was of no consequence what the landlord used the house for.

The tenant disputes the landlord's claims. The tenant testifies that the landlord has owned this house for many years and would have known that the house was noisy to live in. The tenant testifies that the house was last painted over 15 years ago and the landlord agreed the tenants could repaint. The landlord just wanted to paint the house in order to sell it. The tenant disputes that they mutually agreed to end the tenancy. The Notice was never cancelled and they only agreed to move out because the landlord said they wanted to move into the property. The tenant reiterates that they only applied to cancel the Notice as it had been served prematurely.

The landlord testifies that the tenants had painted the walls dark green and this had to be repainted. The landlord testifies that she had never lived in the house and although she was aware it was on a busy road the landlord did not know how noisy the house was.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. It is my decision that at the previous hearing the Two Month Notice to End Tenancy was not cancelled and remained in force and effect. The tenants agreed to move out to allow the landlord to occupy the rental unit. The tenants just agreed to a different date for the tenancy to end and compensation was agreed upon which included the compensation for the Two Month Notice.

By agreeing to move out on December 31, 2012 this does not affect the tenants' rights to compensation under s. 51(2) of the Act which states:

*(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.*

It is clear the landlord wanted to sell the home in 2012 and when that was not possible the landlord attempted to evict the tenants for cause. When that cause of action failed the landlord then issued another Two Month Notice to End Tenancy for the landlord's use of the property. Some minor renovations were completed on the house and the property was then placed on the market to be sold. The house was sold in July, 2013 without the landlord ever moving into and occupying the home. I find the landlord's testimony to lack credibility concerning the reason put forth that she could not occupy the home. Therefore I find the landlord did not act in good faith when the Two Month Notice to End Tenancy was served upon the tenants.

Consequently I find the tenants' application for compensation is upheld as the landlord did not use the property for its intended purpose as stated on the Two Month Notice to End Tenancy dated August 29, 2012.

Conclusion

Having upheld the tenants' application I find the tenants are entitled to compensation equivalent to two months' rent.. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,950.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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 03, 2013

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Residential Tenancy Branch

