



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, SS, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary compensation under the Act or the tenancy agreement, for a substituted service order, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

The Tenants had requested an order for substituted service in their Application. The Tenants explained they were not sure why they requested this order and suggested they requested this in error. Therefore, this portion of the claim is dismissed.

The Tenant had requested monetary compensation for poor Internet service at the rental unit. I note this issue was dealt with at an earlier hearing between the parties and the Tenants' request for this compensation was dismissed. Therefore, the Tenants are not able to reapply for this as this issue has been dealt with and is *res judicata*, or already determined, and is dismissed from this Application. I note the earlier hearing file numbers are recorded on the cover of this decision for ease of reference.

### Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlords?

### Background and Evidence

This tenancy began on December 1, 2011, with the parties entering into a self drafted tenancy agreement. The rent was to be \$900.00 per month and the Tenants paid a security deposit of \$450.00.

On June 18, 2013, the Tenants received a two month Notice to End Tenancy from the Landlords, for the Landlords' use of the rental unit (the "Notice").

The reason the Landlords wanted to end the tenancy was set out in the Notice as the rental unit will be occupied by a close family member of the Landlords. The Landlords had indicated they wanted their daughter and her spouse to move into the rental unit. A letter was sent from the daughter's spouse indicating they were travelling from another country and moving into the rental unit on December 1, 2013.

The Tenants vacated the rental unit on or about August 1, 2013. The parties had a hearing on September 3, 2013, regarding the return of the security deposit and compensation for ending the tenancy. The Tenants were issued a monetary order for return of the deposit under section 38 of the Act and for compensation under section 51(1) of the Act.

The Tenants went to the rental unit to serve the Landlords with the monetary order on September 12, 2013. The Tenants had two witnesses who were there to witness service of the order upon the Landlords.

The male Tenant noticed there was someone occupying the rental unit. He knocked at the door and a gentleman came to the door. The Tenant asked this gentleman if he was a renter and he replied that he was. The Tenant asked the gentleman if he was a family member of the Landlords and the gentleman stated he was not. In evidence the Tenants have provided a statement about these events which was signed by the two witnesses.

The Agent for the Landlord testified that the daughter of the Landlords and her spouse had not yet moved into the rental unit, and cited they have personal reasons for this. The Agent testified that the Landlords were concerned they were going to lose rent and they decided to rent the suite out to another person, who was a friend of the family.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Landlords have breached section 51(2) of the Act.

When the Tenants were given the Notice they were entitled to one month of rent in compensation under section 51(1) of the Act, which was ordered in the first hearing.

Section 51(2) of the Act requires additional compensation to be paid to the Tenants in certain circumstances:

...

(2) In addition to the amount payable under subsection [51](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.**

[Emphasis added.]

As described above, the stated purpose for ending the tenancy in the Notice was that a close family member (defined in the Act as father, mother, spouse or child), intended in good faith to occupy the rental unit.

In this case, the rental unit has not been used for this purpose for any period of time during the five months since the tenancy ended. The Landlords have rented to another person, contrary to the Notice and in breach of the Act.

Therefore, I find the Landlords have breached section 51(2) of the Act, and I must order them to pay the Tenants the equivalent of two months of rent (2 x \$900.00) and their \$50.00 filing fee for the Application, totalling **\$1,850.00**

I grant and issue the Tenants a monetary order for this amount.

### Conclusion

The Landlords failed to use the rental unit for the purpose they stated they were ending the tenancy for. Amongst other relief, this portion of the Act is intended to protect the

Tenants from the Landlords when they do not use the rental unit for the purpose used to justify the Notice to end the tenancy.

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: January 02, 2014

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Residential Tenancy Branch

