



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and 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

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started on May 01, 2007 and ended on June 01, 2013. At the end of the tenancy this was a month to month tenancy. Rent for this unit

started at \$1,000.00 per month and increased over the term of the tenancy to \$1,150.00 per month.

The tenant testified that the landlord had served the tenant with a Two Month Notice to End Tenancy in April, 2013. The reasons the landlord gave on that Notice were that a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares. The landlord also put that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant testified that he did not dispute the Notice and vacated the unit after giving the landlord a month's written Notice. The tenant testified that the landlord converted this unit into two separate suites and on March 01, 2014 a female tenant moved into one of these suites. Prior to that no one had lived in the unit, the landlord has not moved into the other suite and is still residing at her own address. The suite has not been used by a member of the family corporation or a close family member of that corporation. The unit has not been used for a caretaker, manager or superintendent either.

The tenant testified that as the landlord has not used the unit for the intended purpose as given on the Two Month Notice the tenant seeks compensation equivalent to two months' rent to an amount of \$2,300.00. The tenant also seeks to recover the \$50.00 filing fee from the landlord.

The landlord testified that after the tenant vacated the unit the landlord had to do lots of repairs to the unit. The unit was then divided into two separate units. The landlord testified that she used one of these units for business and has rented the other unit to a new tenant. The landlord testified that the remodeling did not start until January, 2014.

The landlord testified that she does live at both addresses and evicted the tenant because the tenant gave the landlord so much trouble.

The tenant disputed the landlord's claim. The tenant refers to the letter provided in evidence from the new tenant living in one half of the unit. In this letter that tenant confirms that no one has lived in the unit for the past year and that she moved in on March 01, 2014. The tenant testified that the unit was left in a good clean condition and the landlord returned the tenants security deposit at the end of the tenancy. The tenant therefore disputed that there were damages left in the unit after he had moved out. The tenant also testified that he went to the unit and saw the other half of the unit in January, 2014 and there was no furniture in that unit. The tenant therefore disputed that the landlord lives at both homes.

### Analysis

I refer the parties to s. 51 (2) of the Act which states:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(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.*

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the landlord stated during the hearing that she had to do repairs to the unit, that the unit was converted into two units and that the landlord lives in one of these units. The landlord also testified that she evicted the tenant because “ the tenant gave the landlord so much trouble”.

The tenant has testified that a new tenant did not move into the unit until March 01, 2014 and the other unit has not been occupied by an individual who owns, or whose close family members own, all the voting shares or that the landlord converted the rental unit for use by a caretaker, manager or superintendent of the residential property. I find there is insufficient evidence from the landlord to show that the unit has been used for either of the reasons given on the Two Month Notice for at least 6 months beginning within a reasonable period after the effective date of the Notice. I find it is highly unlikely that the landlord is residing in the unit and still living in her other home in the area. I also find the landlord's evidence to be contradictory in stating the purpose the Two Month Notice was given when the landlord also stated that she wanted to evict the tenant because he gave the landlord so much trouble.

It is therefore my decision that the unit has not been used for its intended purpose as indicated on the Two Month Notice and consequently I uphold the tenant's application for compensation equivalent to two months' rent. The tenant will receive a monetary award to the amount of **\$2,300.00** pursuant to s. 67 of the *Act*.

As the tenant has been successful I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,350.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: August 18, 2014

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Residential Tenancy Branch

