



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNDC; FF

### **Introduction**

This Hearing was convened in response to the Tenants' Application seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

It was determined that the Tenants served the Landlord with their Notice of Hearing documents and documentary evidence by registered mail sent August 14, 2014. A copy of the Canada Post tracking system printout was provided in evidence, which indicates that the Landlord received the documents on August 28, 2014.

It was also determined that the Landlord served the Tenants with her documentary evidence by registered mail sent February 17, 2015. The registered mail receipt was provided in evidence.

### **Issue(s) to be Decided**

Are the Tenants entitled to compensation in the equivalent of two months' rent pursuant to the provisions of Section 51(2) of the Act?

### **Background and Evidence**

Both parties gave a considerable amount of oral testimony and documentary evidence; however, I have recorded only the **relevant submissions and testimony** with respect to this Application.

A copy of the tenancy agreement was provided in evidence. This tenancy began on September 1, 2012, and was a one year lease. Monthly rent was \$1,950.00, due on the first day of each month.

The Tenants gave the following testimony:

On August 27, 2013, the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property effective October 31, 2014, a copy of which was provided in evidence. The Tenants did not dispute the Notice and moved out of the rental unit on September 19, 2013. The Tenants were provided with one month's rent compensation pursuant to the provisions of the Act.

The Tenants testified that the Landlord did not use the rental unit for the purpose provided on the Notice to End Tenancy. They testified that the rental unit was renovated after the Tenants moved out and advertised in August, 2014, for rent in the amount of \$2,800.00.

The Landlord gave the following testimony:

The Landlord stated that the rental unit was owned by three sisters, one of whom had passed away. She stated that the family discussed selling the rental unit and had told the Tenants that they were going to sell it, but that they changed their minds. The Landlord testified that her elderly parents were going to move into the rental unit, but that those plans fell through after it had been renovated for their comfort and needs. The Landlord stated that the rental unit was used by family members only between the end of the Tenants' tenancy and August 2014.

**Analysis**

The Tenants seek compensation under the provisions of Section 51(2) of the Act, which provides:

- 51** (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.

The Notice to End Tenancy provides the following purpose for ending the 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”.

The Tenants did not dispute the Notice to End Tenancy and chose to move out and accept the compensation granted under Section 51(1) of the Act. The time to dispute the Notice on the Landlord’s “good faith” intentions was within 15 days of receipt of the Notice.

Black’s Legal Dictionary defines “occupy” as follows: “To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession”. In other words, there is no requirement for a landlord to live in the rental unit in order to “occupy” it. I find that the Landlord kept the rental unit for her own use and that there is insufficient evidence that the rental unit was not used for the purpose stated on the Notice for a period of at least six months from the effective date of the Notice.

### **Conclusion**

The Tenants’ application is **dismissed without leave to reapply**.

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 16, 2015

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Residential Tenancy Branch

