



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenants seeking to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside, and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Despite having been served with the tenants' documentary evidence and the application for dispute resolution and notice of hearing by registered mail on June 15, 2015, the landlords did not participate in the conference call hearing. I am satisfied that the landlords have been served in accordance with Section 89 of the Act and this hearing proceeded and concluded in their absence.

### Preliminary Issue

In addition to the items that the tenants applied for listed above, they also filed for an order seeking a rent reduction, however after canvassing what they were seeking it was clear to me that the monetary order applied for was their intent and not a rent reduction. I proceeded on that basis.

### Issue to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on June 1, 2013 and is ongoing. The tenants were obligated to pay \$1000.00 per month in rent. The tenants stated that the landlord issued a notice to end tenancy in bad faith. The tenants stated that the landlord keeps changing his story as to who is going to move into the home. The tenants stated that the landlord advised them that his sister was going to move in, then his father, then himself. The tenants stated the notice should be set aside as the landlord is not clear on what his intent is.

The tenants stated that they are asking for \$4500.00 as compensation for several items. The tenants stated that the yard was so messy and "embarrassing" that they took it upon themselves to clean. The tenants also stated that they cleaned driveway and seek to be compensated for their time. The tenants stated that they have paid two filing fees

for two other hearings and would like that money reimbursed. The tenants stated that the landlord is a difficult person to deal with and that he's harassed them. The tenants stated that they are seeking \$500.00 as compensation for the harassment. The tenants stated that "we think the other tenants are stealing our mail". The tenants stated that they requested the landlord to change the mailbox key on the community mailbox, but he didn't. The tenants are seeking compensation for lost pension cheques due to the landlords' inaction. The tenants are seeking potential moving costs of \$1500.00 if they have to move as a result of the notice.

Along with the tenants seeking to have the notice to end tenancy set aside, the tenants are applying for the following:

1.	Potential moving costs	\$1,500.00
2.	Removal of garbage in the yard	\$200.00
3.	Clean the driveway	\$200.00
4.	Recover filing fees from previous hearings	\$100.00
5.	Compensation for Harassment	\$500.00
6.	Compensation for lost mail	\$2000.00
7.	Filing fee for this hearing	\$50.00
	Total	<b>\$4650.00</b>

### Analysis

The landlord chose not to participate in this hearing or submit any documentary evidence for this hearing. The tenants have brought into question whether the landlord is acting in good faith; the tenants feel he is not. The tenants stated the landlord issued the notice to end tenancy on the basis that the landlord or the landlords spouse or a close family member of the landlord will be occupying the suite.

The tenants stated that landlord has given several different versions of who would be living in the home and feel that clearly demonstrates that he is acting in bad faith. Based on the above and in the absence of any disputing evidence from the landlord, I hereby set aside the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 29, 2015 with an effective date of December 1, 2015. The notice is of no effect or force and the tenancy continues on the original terms of the tenancy agreement.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I address the tenant's claims and my findings as follows.

1. Potential Moving Fees - \$1500.00.

As I have deemed that the tenancy is to continue and that the tenants have not had to incur any moving costs, I dismiss this portion of their application.

2. Removal of Garbage in the yard - \$200.00.

The tenants stated that they were embarrassed at the condition of the yard and took it upon themselves to move the garbage to the end of the field on the property. The tenants estimated that it took them 4 hours to clean up.

The tenants were not required, hired or asked to conduct this work. In addition, the tenants have failed to provide sufficient evidence to prove that the cleanup would take four hours and that it would cost \$200.00. Based on the insufficient evidence before me I dismiss this portion of their claim.

3. Clean the Driveway - \$200.00.

The tenants stated that the downstairs tenants allowed hydraulic fluid to drip all over the driveway and the tenants decided to clean it up. The tenants estimated that it took them 4 hours to clean up.

As stated in the previous claim; the tenants were not required, hired or asked to conduct this work. In addition, the tenants have failed to provide sufficient evidence to prove that the cleanup would take four hours and that it would cost \$200.00. Based on the insufficient evidence before me I dismiss this portion of their claim.

4. Filing fees from previous hearings \$100.00.

As other arbitrators have already made a finding in regards to those fees, I deem that I am Res Judicata and therefore dismiss this portion of the tenants claim.

5. Compensation for harassment – \$500.00.

The tenant stated that they feel that they have endured a lot with this landlord and that \$500.00 is fair compensation. Other than their one sentence statement, the tenants did not offer any further testimony or documentation to support this claim. The tenants have

failed to meet any of the four grounds as listed above and I therefore must dismiss this portion of their application.

6. Compensation for lost pension cheques - \$2000.00.

The tenants stated that because they shared the community mailbox with other tenants, the landlord is responsible for the female tenant not receiving her Canada Pension Plan Cheques. The tenants did not provide any letters, correspondence or even copies of previous deposits or cheques to support the amount sought. The tenants have failed to provide sufficient evidence to meet any of the four grounds listed above and I therefore dismiss this portion of their application.

As the tenants have been only partially successful in this application I decline to award them the recovery of the filing fee and they must bear that cost.

Conclusion

The Notice to End Tenancy is set aside, the tenancy continues.

The tenants' monetary claim is dismissed in its entirety.

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: November 18, 2015

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Residential Tenancy Branch

