



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on December 30, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her legal Advocate, and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Have the Tenants met the burden of proof to be awarded a Monetary Order?

### Background and Evidence

The Landlords and Tenants entered into a written fixed term tenancy agreement that began on April 1, 2013 which switched to a month to month tenancy after one year. Rent of \$1,700.00 was payable on or before the first of each month. On May 21, 2013 the Tenants paid \$850.00 as the security deposit.

On October 30, 2015 the Tenants were served a 2 Month Notice to end tenancy which listed an effective date of December 31, 2015 and indicated the following reason for ending the tenancy:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

[Reproduced as written]

The Tenants vacated the rental unit and ended their tenancy early on December 13, 2015. The Tenants confirmed that they had received compensation equal to one month's rent after being served the 2 Month Notice. The Tenants stated that they did not dispute the validity of the 2 Month Notice.

The Tenants asserted that they are now seeking \$20,000.00 as compensation for having to move and for being forced into a higher rental market. They argued they are entitled to the additional monetary compensation from their Landlord because the rental unit was not used for the intended reasons as listed on the 2 Month Notice. They argued the purchaser began to advertise the rental unit for rent at a higher price, as provided in their documentary evidence.

The Tenants stated that they brought this application against their former Landlords because they were told to do so as their tenancy agreement was with their Landlords and not the purchaser.

The Landlord disputed the Tenants' claim for compensation and argued that the 2 Month Notice was issued in good faith. They submitted evidence which indicated their realtor had contacted the purchaser and informed her of the requirements of the *Act* after the Tenants served them with their application.

The Landlord confirmed they met the requirements set out in the *Act* and issued the notice in good faith.

The Tenants did not dispute the Landlords issued the 2 Month Notice in good faith and in accordance with the *Act*.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 49(5) of the *Act* stipulates in part that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[My emphasis added by bold text]

Section 51(2) of the *Act* states in part, that in addition to the amount payable under subsection (1)[*tenant's compensation for receipt of 2 Month Notice*], 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 [my emphasis added by bold text].

The undisputed evidence was on October 30, 2015 the Tenants were served a 2 Month Notice to end tenancy effective December 31, 2015. The Tenants chose not to dispute the Notice; received compensation for being issued the Notice pursuant to section 51(1) of the *Act*; and vacated the rental unit ending the tenancy early on December 13, 2015.

I do not accept the Tenants' submissions that the burden to pay compensation under section 51(2) of the *Act* falls upon the Landlords simply because the tenancy agreement was between the Tenants and the Landlords.

Rather, I interpret section 51(2) of the *Act*, which states, in part, "...the landlord, **or** the purchaser, as applicable under section 49 must pay the tenant..." to mean that in cases where the Notice was issued on the request of the purchaser, the burden to pay

compensation would fall upon the purchaser if the unit was not used for the stated purpose purported by the purchaser.

I make the above interpretation in part, as it would be unconscionable to consider that a landlord would be responsible for or have control over decisions made by the purchaser after all conditions to the purchase or sale agreement were met.

Based on the above, I find the Tenants have submitted insufficient evidence to prove a claim against the respondent Landlords in this matter. Therefore, I dismiss the Tenants' application in its entirety.

### Conclusion

The Tenants were not successful with their application and it was dismissed in its entirety, without leave to reapply.

This decision is final, legally binding, and 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 04, 2016

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Residential Tenancy Branch

