



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 8, 2015. The Tenants filed seeking a Monetary Order for: money owed or compensation for damage or loss under the *Act*, Regulation, and/or tenancy agreement and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person provided affirmed testimony. Upon review of the Tenants' application form the Tenants submitted they were seeking \$6,869.00 compensation because the Landlord did not tell the truth under oath as she has not used the rental unit for the reasons why they were evicted. The Tenants confirmed they had served the Landlord with copies of their application and evidence which included a statement outlining the details of their claim.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

The Tenants stated their application was filed listing the address of the entire house. They said they were instructed, by the Residential Tenancy Branch (RTB) staff, to identify the level of the house the Landlord failed to utilize in accordance with the Notice to end tenancy; which is why they wrote "upper unit" on the side of their application.

The Landlord was given the opportunity to present evidence regarding the format of the application and her knowledge of the details of the claim. The Landlord began by stating she did not understand English. Upon further clarification the Landlord confirmed she had attended previous Dispute Resolution hearings on her own, without a translator, and she knew this hearing would be conducted in English in the same fashion the previous hearings were conducted. She then confirmed she understood what I was saying and stated the Tenants were always suing her for money. The Landlord confirmed she knew this hearing was scheduled regarding the address where the Tenants had occupied the lower level or garden level of her house. The Landlord asked if her evidence package had been received by the RTB. I confirmed her evidence had been received by the RTB.

Based on the submissions of the Landlord, as documented above, and notwithstanding the Landlord knowing English as a second language, I found the Landlord capable of

understanding this process and presenting her evidence during this proceeding, pursuant to section 62(2) of the Act. I further find the Landlord knew, or ought to have known, the Tenants' application related to the rental unit address, accordingly, the style of cause has been amended, pursuant to section 64(3)(c) of the Act.

Each party confirmed receipt of the evidence served by each other. No issues regarding service or receipt of that evidence were raised. As such, I accepted the relevant submissions submitted by the Tenants and the Landlord, as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Have the Tenants proven entitlement to compensation relating to a 2 Month Notice to end tenancy?

#### Background and Evidence

The parties attended a dispute resolution hearing on March 3, 2015 regarding the Tenants' application to cancel notices to end tenancy and to seek monetary compensation. A Decision was issued March 5, 2015 granting the Landlord an Order of Possession based on a 2 Month Notice to end tenancy for landlord's use of the property.

In the Decision of March 5, 2015 evidence regarding the terms of the tenancy agreement was recorded as follows:

*This tenancy commenced on February 15, 2012, initially as a one-year fixed term tenancy. The parties signed a subsequent one-year fixed term tenancy agreement covering the period from February 15, 2013 until February 14, 2014. Once the second fixed term tenancy expired, this converted to a month-to-month tenancy. Monthly rent for this two bedroom basement unit was initially set at \$2,200.00, but has escalated to \$2,350.00 at present, due on the 15<sup>th</sup> of each month.*

[Reproduced as written p 4]

From the March 5, 2015 Decision the Arbitrator heard evidence regarding the Landlord's reasons for seeking possession of the rental unit for the Landlord's use. The Arbitrator upheld the 2 Month Notice for landlord's use and granted the Order of Possession. That Decision was based, in part, on the following:

*Based on a balance of probabilities, I find that the landlord has met the burden of proving that she does truly intend to move into the tenants' rental unit as stated on the 2 Month Notice. In coming to this determination, I recognize that the*

*relationship between these parties has deteriorated to the extent that the landlord no doubt has additional motivation to seek an end to this tenancy. Despite some inconsistent testimony from the landlord regarding the availability of a vacant suite in her second rental property, I find that she does genuinely intend to vacate the main floor of this house and move into the tenants' rental unit. Although she admitted at the hearing that she has made poor financial decisions with her real estate holdings, this decision to relocate to the tenants' rental unit would seem to be a prudent way of maximizing her income to offset the losses she is experiencing while avoiding any disruption to her daughter's education. After carefully considering RTB Policy Guideline 2, I find that the other purposes that the landlord may also have in seeking an end to this tenancy do not negate her honesty of intent to actually move into the tenants' rental unit and rent out her current main floor accommodations.*

[Reproduced as written p 8 & 9]

The Tenants asserted the Landlord has not taken steps towards the intended use of the rental unit as they have evidence the Landlord continues to reside in the upper level of the house. As a result they are seeking \$6,869.00 which is comprised of: \$749.20 moving costs; \$450.00 x 12 months of additional monthly rent payments; \$390.00 for time moving; \$210.00 for moving; plus \$120.00 for additional time with moving.

The Tenants submitted an email witness statement which they said was received from a neighbour to the rental property. They read the email into evidence which stated, in part, as follows:

*Since mid July there has been no visible sign of anyone at [landlord's name] house, on the main floor or at the basement suite level. The window blinds of the basement suite have remained closed during this entire period.*

[Reproduced as written]

In addition, the Tenants submitted documentary and photographic evidence regarding tenants who occupy the other rental property owned by the Landlord.

The Landlord testified that she was living in the entire house. She clarified her submission stating she was living in the upstairs and the downstairs of the house, including the area where the Tenants had resided.

When I asked the Landlord why she had not rented out of the upper level she responded by stating: "I live in the whole house now". When asked if she had anything further to add the Landlord stated that the Tenants "were always wanting more money from me".

In closing, the Tenants argued the Landlord should be charged with fraud for providing false testimony. In their written submissions they requested the Landlord be charged with an administrative penalty.

### Analysis

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

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Upon review of the Tenants' witness's email, I give that evidence minimal evidentiary weight as the author of that email was not present at the hearing to be cross examined. That being said, I have considered the fact the Landlord did not dispute this evidence.

As stated above the Order of Possession was granted to the Landlord in the March 5, 2015 Decision based on the following:

*I find that the other purposes that the landlord may also have in seeking an end to this tenancy do not negate her honesty of intent **to actually move into the tenants' rental unit and rent out her current main floor accommodations.***

[Reproduced as written my emphasis added in bold text]

Section 51(2) of the Act stipulates that in addition to the amount payable under subsection (1), if 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 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.

Based on the totality of the evidence before me, notwithstanding the Landlord's submissions she is allegedly occupying the entire house, I find the Tenants submitted sufficient evidence to prove the Landlord has not utilized the property for the intended reason stated to support the 2 Month Notice; as the Landlord has not rented out the upper level of the house and is not residing solely in the lower level where the Tenants had been residing.

The Tenants filed seeking \$6,869.00 in monetary compensation for moving costs and additional rent; however, as stated above, section 51 of the Act provides compensation in these circumstances which is equal to two month's rent, instead of moving costs and

losses incurred resulting from the move. Accordingly, I find the Tenants are entitled to monetary compensation equal to two month's rent of **\$4,700.00** (2 x \$2,350.00), pursuant to sections 51(2) and 67 of the *Act*. The balance of their monetary request is dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenants have been issued a Monetary Order for **\$4,800.00** (\$4,700.00 + \$100.00). This Order must be served upon the Landlord and may be enforced through Small Claims Court.

I declined to hear matters regarding the Tenants' request to proceed against the Landlord for lying under oath, for want of jurisdiction. If the Tenants wish to proceed with that allegation they are at liberty to apply to the court which holds competent jurisdiction.

In regards to the Tenants' requests to bring Administrative Penalties against the Landlord, the Tenants are at liberty to present that request to the Director of the Residential Tenancy Branch if they wish to proceed.

### Conclusion

The Tenants were primarily successful with their application and were awarded monetary compensation in the amount of **\$4,800.00**.

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: April 26, 2016

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Residential Tenancy Branch