



# 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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 23, 2015. The Tenant 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 Tenant. No one was in attendance on behalf of the Landlords. The Tenant provided affirmed testimony that the Landlords were served notice of this application, Notice of this hearing, and his evidence by registered mail on December 10, 2015. Canada Post tracking receipts were submitted into evidence.

On May 31, 2016 a one page document was received from the Landlords in response to the Tenant's application.

Based on the above, I find the Landlords were sufficiently served notice of this application for Dispute Resolution and hearing, in accordance with Section 89 of the *Act*. Accordingly, I proceeded to hear the undisputed evidence of the Tenant in absence of the respondent Landlords.

### Issue(s) to be Decided

Has the Tenant proven entitlement to compensation relating to a 2 Month Notice to end tenancy?

### Background and Evidence

The Tenant submitted evidence that on November 3, 2014 the parties entered into a written month to month tenancy agreement that began on November 15, 2015. Rent of \$800.00 was payable on or before the first of each month and the Tenant paid a \$400.00 security deposit which has subsequently been returned to her.

On September 1, 2015 the Tenant was served a 2 Month Notice to end tenancy (2 Month Notice) for landlord's use of property. The 2 month Notice listed an effective date of November 1, 2015. The Tenant vacated the rental property as of October 1, 2015 after securing alternative accommodations.

The Tenant stated the Landlords told her they no longer wanted to rent the suite and wanted to keep it for their own use. The Tenant submitted evidence that neither the Landlords nor the Landlords' family members occupied the rental property for a full 6 months after the effective date of the 2 Month Notice.

The evidence provided by the Tenant included a November 13, 2015 newspaper advertisement listing the rental unit for a short term rental and a June 19, 2016 on-line short term rental advertisement.

On May 31, 2016 a one page submission was received from the Landlords which stated, in part, as follows:

*In the 6 months following [Tenant's name] vacating the premises in question, we have used this suite for our own use, and for visiting family. We also, during this time, decided we would rent the suite short term, for the periods when we were not using it ourselves...*

[Reproduced as written]

The Tenant argued the rental unit was not occupied for the reasons she was evicted. As a result she was seeking \$1,600.00 compensation which is an amount equal to two month's rent (2 x \$800.00).

### Analysis

Given the evidence before me, in the absence of any evidence from the Landlords, who did not appear despite being properly served with notice of this proceeding, I accept the undisputed evidence as submitted by the Tenant.

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

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 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 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.

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.

I accept the undisputed evidence that the rental unit was not occupied by the Landlords or their family members for the period of a full 6 months after the Tenant had vacated the rental unit. Furthermore, I accept that steps had not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act*. Accordingly, I grant the Tenant's application in the amount of **\$1,600.00** (2 x \$800.00 monthly rent), pursuant to section 67 of the *Act*.

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 Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

I hereby order the Landlords to pay the Tenant \$1,650.00 forthwith (\$1,600.00 + \$50.00). In the event the Landlords do not comply with that order, the Tenant has been issued a Monetary Order for **\$1,650.00** which may be enforced through Small Claims Court after service upon the Landlords.

### Conclusion

The Tenant was successful with their application and was awarded monetary compensation in the amount of **\$1,650.00**.

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: June 27, 2016

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Residential Tenancy Branch

