



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlords did not appear at the hearing. The tenant testified that she served the landlords with her hearing packages by registered mail. The tenant stated that she sent one hearing package to the male landlord at his office and the second package for the female landlord was delivered to the landlord's address of residence. The tenant testified that she received a written response and evidence from the landlords. I noted that I was also in receipt of a written response and evidence from the landlords. Accordingly, I was satisfied that the landlords were sufficiently served with notification of this proceeding and I continued to hear from the tenant without the landlords present.

In keeping with Rule 7.4 of the Rules of Procedure, I have not given further consideration to the landlord's written submissions and evidence since the landlords did not appear at the hearing to present their evidence and were not subject to examination. Rule 7.4 of the Rules of Procedure provides:

#### **Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In light of the above, this decision reflects the submissions and evidence provided by the tenant only.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlords in the amount claimed?

Background and Evidence

The tenant and the former landlords entered into a tenancy agreement for the subject property in 2003. The property was sold to the current owners in 2014. On October 30, 2014 the current landlords served the tenant with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the 2 Month Notice) with a stated effective date of December 31, 2014. The 2 Month Notice indicates the reason for ending the tenancy is that "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant". The tenant did not file an Application for Dispute Resolution to dispute the 2 Month Notice and moved out of the rental unit on November 28, 2014. At the end of the tenancy the tenant was paying monthly rent in the amount of \$1,040.00.

The tenant acknowledged that the rental unit was in need of some repairs but submitted that upon receipt of the 2 Month Notice she informed the landlords that she was willing to put her possessions in storage so as to accommodate the landlords' desires to renovate the rental unit with a view to keeping her tenancy. The landlords responded by stating they had already made up their minds to end the tenancy. In September 2015 the tenant went to the rental unit and observed the mostly cosmetic improvements made to the upper level of the house only and determined that the new tenants were paying rent of \$1,250.00 per month.

The tenant submitted that had the landlords been limited in increasing her rent as provided under the Act, it would have taken years before the tenant would have been required to pay the amount of rent the current tenants are paying. The tenant submitted that she suffered greatly, financially, as a result of the tenancy ending. The tenant stated that she currently rents a much smaller unit for \$1,100.00 per month. Further, the tenant had created an illegal basement suite in the rental unit and she has lost the ability to generate rental income.

The tenant seeks to recover \$23,760.00 from the landlords. The tenant calculated this amount as \$18,000.00 for loss of rental income from the illegal basement suite over a 2.5 year period; plus, \$5,760.00 for the increase in her monthly rent payment over the next 8 years. As documentary evidence, the tenant provided a document purportedly signed by the person who rented the basement suite on October 1, 2014.

I noted that I was not provided a copy of the 2 Month Notice by either party. I ordered the tenant to provide me with a copy of the 2 Month Notice for my review, which she did.

### Analysis

Upon review of the 2 Month Notice served upon the tenant, I find the landlords ended the tenancy for a reason that corresponds with section 49(6) of the Act. Section 49(6) permits a landlord to end the tenancy, if the landlord has all necessary permits and approvals and intends in good faith to:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant has submitted that the landlords made cosmetic changes and re-rented the unit a short time later for more rent and did not fulfill the stated purpose for ending the tenancy by making substantial repairs to the property that would require the rental unit to be vacant and the tenancy ended. In the absence of the landlords at the hearing I find the landlords failed to counter the tenant's submissions.

As for compensation the tenant is entitled to receive for the landlords' failure to fulfill the stated purpose, section 51(2) of the Act provides for such compensation.

Compensation under section 51(2) not only compensates a tenant who has had their tenancy unlawfully ended under section 49 but it is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act or in bad faith.

Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I award the tenant double the monthly rent as provided under section 51(2) of the Act, which is \$2,080.00. I have not given further consideration to any losses the tenant may have suffered as a result of the illegal basement suite she created in the rental unit. Nor, have I considered the tenant's alleged increase in monthly rent payments in the absence of corroborating evidence of such.

Provided to the tenant is a Monetary Order in the amount of \$2,080 to serve upon the landlords and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

### Conclusion

The tenant has been provided a Monetary Order in the amount of \$2,080.00 to serve and enforce upon the landlords.

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: July 05, 2016

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Residential Tenancy Branch