



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

On April 14, 2016 a dispute resolution hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary compensation. The tenant participated in the teleconference hearing, but the landlord did not. The tenant was granted a monetary order. The landlords applied for a review of this decision. The decision and order dated April 25, 2016 were suspended pending a review hearing.

This is a review hearing granted for the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of a review hearing and the review decision on May 24, 2016 via Canada Post Registered Mail. The tenant confirmed receipt of the notice and decision in this manner. I accept the undisputed affirmed evidence of both parties and find pursuant to sections 88 and 89 of the Act that both parties were properly served.

The tenant stated that his evidence packages were served via Canada Post Registered Mail to the landlord. The landlord disputed this stating that no evidence has been served to them by the tenants. The tenant was unable to provide a date of service or any supporting evidence to satisfy me that the tenant's evidence was served to the landlord via Canada Post Registered Mail. Based upon the conflicting and contradictory evidence of both parties I find on a balance of probabilities that the tenant has failed to

properly serve the landlord with the submitted documentary evidence. As such, the tenant's documentary evidence is excluded from consideration for this hearing.

The landlord provided affirmed testimony that the landlord's submitted documentary evidence was served to the tenant via Canada Post Registered Mail on May 24, 2016. The tenant disputed that no evidence was served. The landlord has provided a copy of the Canada Post Registered Mail Customer Receipt as confirmation of service. I find on a balance of probabilities based upon the above noted evidence that the tenant was properly served with the landlord's submitted documentary evidence as per sections 88 and 89 of the Act. The tenant is deemed to have been served 5 days later as per section 90 of the Act.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This is a month-to-month tenancy in which the tenant's monthly rent was \$700.00 payable on the 1<sup>st</sup> day of each month as shown by the signed tenancy agreement dated June 3, 2013. A security deposit of \$350.00 was paid on June 3, 2013.

Both parties confirmed that the landlord serve the tenant with a 2 Month Notice to End Tenancy issued for Landlord's Use dated April 30, 2014. The notice indicated that the reason for ending the tenancy was that the landlord intended to occupy the rental unit. The tenancy ended on June 30, 2014 as per the notice to end tenancy.

The tenant provided direct testimony that the rental unit was not used for the intended reason stated on the 2 Month Notice dated April 30, 2014. The tenant stated that a new tenant is now residing in the rental unit. The landlord disputed this claim stating that her son took possession of the rental unit and still using it. The landlord provided written details stating that her son had occupied the rental unit for 6 months. The landlord stated that her son now uses it as his personal storage space. The landlord has submitted in support two letters from a neighbor and the upstairs tenant in confirmation.

### Analysis

Section 51(2)(b) sets out that where a rental unit is not used for the state purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy. In this case, the tenant argues that the landlord has failed to use the rental unit for the stated purpose and has re-rented the rental unit after he had vacated it. The landlord has disputed this claim stating that her son occupied the rental premises for 6 month before using it as his personal storage space.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties have provided conflicting and contradictory evidence. I find that the tenant has failed in his burden to provide sufficient evidence to satisfy me that the landlord failed to use the rental premises for the stated purpose for at least six months.

### Conclusion

The tenant's application is dismissed.

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: August 4, 2016

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Residential Tenancy Branch

