



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARDERO PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Issues

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

On September 28, 2016, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2016. The reason cited on the Notice was for the rental unit to be occupied by landlord or the landlord's close family member.

Although the tenants originally filed an application to dispute the Notice, the tenants subsequently vacated the rental unit on November 5, 2016 as they found alternative accommodation. The tenants received compensation for one month's rent pursuant to section 51 of the Act.

The tenants are claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the 2 Month Notice to End Tenancy effective November 30, 2016. The tenants are also claiming various expenses related to moving costs.

In support of their claim for moving expenses and compensation for an amount equivalent to double the monthly rent, the tenants submit that the property manager initially approached them 14 months prior to issuing the 2 Month Notice and advised them the landlord wished to evict the tenants so his son could use the rental unit. The tenants submit that it was later suggested to them that they could stay for an additional 3-4 years if they agreed to a 20% rent increase. The tenants submit they heard nothing further until receiving the 2 Month Notice on September 28, 2016. The tenants did not have or submit any evidence on whether the landlord was now utilizing the rental property for his own use.

The landlord's agent submits that they have given proper notice under the Act and that as of the weekend of November 26, 2016, the landlord's son has moved into the rental unit. The landlord's agent acknowledged that there were discussions 14 months prior to the Notice being served but nothing came of the discussions at that time.

### Analysis

Section 51 (2) of the Act provides that 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.

The tenants did not provide any evidence that the landlord's son has not moved into the rental building. The tenants did not dispute the testimony of the landlord's agent that the landlord's son has moved into the rental unit as of November 26, 2016. I note that the effective date of the Notice was not until November 30, 2016 so the landlord was not obligated to take appropriate steps within a reasonable period after this date. The tenants' application for compensation under this part of the Act is premature as it was filed before the effective date of the Notice. In either event, I accept the uncontested testimony of the landlord's agent and find that the landlord has used the rental unit for the purpose stated in the Notice. The tenants' application for 2 Month's compensation is dismissed without leave to reapply.

By vacating the rental unit on November 5, 2016, the tenants accepted the landlord's Notice to End tenancy and incurred moving expenses. The tenants cannot now argue

that the Notice was not issued in good faith. The proper recourse for the tenants was to file an application to dispute the Notice on these grounds. The tenants initially filed the application on this ground but subsequently vacated the rental unit on their own choice. The landlord cannot be held liable for moving costs incurred as a result. The tenants' application for compensation for all moving related expenses is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: December 01, 2016

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Residential Tenancy Branch