



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX KELOWNA PROPERTY MANAGEMENT (AGENT)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC OLC FF

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, and to recover the cost of the filing fee. The tenants indicates in their Application that they are requesting 2 month's rent in compensation as the landlord did not use the property for the use indicated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 30, 2016 (the "2 Month Notice") as served on the tenants.

The tenants and two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

The agents testified and submitted a copy of the tenancy agreement which supports that the agents were acting on behalf the owner, D.M. As a result, the agents and tenants agreed to amend the Application to add the name of the owner, D.M. as a respondent to the Application and clarify that the agents were acting as agents on behalf of the owner when the 2 Month Notice was issued. This amendment was permitted pursuant to section 64(3) of the *Act*.

Issue to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 1, 2014 and reverted to a month to month tenancy after November 30, 2015. The tenants testified that they received the 2 Month Notice on January 30, 2016 and that they accepted the 2 Month Notice and did not dispute it. The tenants vacated the rental unit on the effective date listed on the 2 Month Notice which was March 31, 2016.

The reason stated on the 2 Month Notice is:

“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother or child) of the landlord or the landlord’s spouse.”

[reproduced as written]

The tenants testified that a few weeks after they vacated the rental unit they saw a “For Sale” sign go up at the rental property. The tenants stated that approximately one month after that, a “sold” sign was posted on the “For Sale” sign which occurred less than two months after the tenants vacated the rental unit based on being served a 2 Month Notice. The tenants submitted in evidence a document from their realtor which supports that the rental property was sold as of May 23, 2016. On the same document, the advertisement for the property reads in part:

“SELLER IS VERY MOTIVATED!!! VACANT FOR QUICK POSSESSION!”

[reproduced as written]

The agents did not dispute the documents or testimony submitted by the tenants. The tenants are seeking compensation in the amount of \$3,400.00 which is double the monthly rent of \$1,700.00 pursuant to section 51(2) of the *Act* as the rental unit was not used for the stated purpose in accordance with the *Act*.

Analysis

Based on the undisputed documentary evidence of the tenants and the undisputed testimony of the tenants provided during the hearing, and on the balance of probabilities, I find the following.

Section 51(2) of the *Act* applies and states:

**(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, 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.**

[my emphasis added]

Based on the evidence before me, I find the tenants have met the burden of proof and are entitled to **\$3,400.00** in compensation from the landlord, comprised of double the monthly rent of \$1,700.00 pursuant to section 51(2) of the *Act*. I find the realty listing document clearly indicates that the landlord wanted to sell the property quickly and that vacant possession was used as a selling feature on the realty listing and that the property was not used for the purchase as stated in the 2 Month Notice.

As the tenants' Application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00**.

Given the above, I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,500.00** comprised of \$3,400.00 for double the monthly rent of \$1,700.00 pursuant to section 51(2) of the *Act* plus the recovery of the \$100.00 filing fee.

Conclusion

The tenants' Application is fully successful.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,500.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: December 5, 2016

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Residential Tenancy Branch