



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on July 26, 2016. The Tenants filed seeking a Monetary Order for: money owed or compensation for damage or loss under the *Act*, Regulation, and/or tenancy agreement; for other relief; and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the application, notice of hearing documents, and evidence served by the Tenants. No issues regarding service or receipt of those documents were raised. The Landlord stated he did not submit documentary evidence in response to this application. As such, I accepted the relevant submissions from the Tenants as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Have the Tenants proven entitlement to compensation relating to a 2 Month Notice to end tenancy?

### Background and Evidence

The Tenants submitted evidence that on November 18, 2015 the parties entered into a written month to month tenancy agreement that began on November 15, 2015. Rent of \$900.00 was payable on or before the first of each month which included the cost of utilities. On May 25, 2012 the Tenants paid \$425.00 as the security deposit. On or around November 18, 2015 the Tenants were 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 January 31, 2016 and the following reason for issuing the Notice:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The Tenants vacated the rental property in early January 2016 in accordance with the 2 Month Notice. The Tenants submitted evidence that neither the Landlord nor the Landlords' family members occupied the rental property. They submitted evidence of an internet post advertising their rental unit for rent in January 2016 shortly after they moved out. They noted that prior to their vacating the suite someone knocked on their door and told them they could stay in the unit if they agreed to pay their rent in cash. The Tenants argued that was evidence to support the new owner had no intention of moving in the rental unit.

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.

The Tenants filed their application seeking \$1,800.00 compensation which is an amount equal to two month's rent (2 x \$900.00).

I heard the Landlord state he was the agent for the previous owner and when that contract ended he entered into a contract with the new owner to manage the rental property. The Landlord testified the new owner's intentions were originally to move into the rental unit while they renovated; however, they changed their mind and did not move into the unit.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After

careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

**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 that 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.

In determining these matters I considered section 51(2) of the *Act* which 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 new owner, the Landlord, or their family members for the period of a full 6 months after the Tenants 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 Tenants' application in the amount of **\$1,800.00** (2 x \$900.00 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 Tenants have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

I hereby order the Landlord to pay the Tenants **\$1,900.00** forthwith (\$1,800.00 + \$100.00). In the event the Landlord does not comply with that order, the Tenants have been issued a Monetary Order for **\$1,900.00** which may be enforced through Small Claims Court after service upon the Landlord.

#### Conclusion

The Tenants were successful with their application and was awarded monetary compensation in the amount of **\$1,900.00**.

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: February 1, 2017

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Residential Tenancy Branch