



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

On September 6, 2016, the Tenants submitted an Application for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the Act, the regulations, or a tenancy agreement, and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Applicants / Tenants appeared at the hearing; however the Landlord did not.

The Tenant K.P. provided affirmed testimony that the Notice of Hearing and a copy of her documentary evidence was sent to the Landlord on September 9, 2016. The Tenant testified that she served the Notice of Hearing using Canada Post registered mail. The Tenant testified that she sent the registered mail to the address that the Landlord provided within the Condition Inspection Report. The Tenant testified that Canada Post redirected the mail to a different address due to a change of address that Canada Post had on file for the Landlord. The Tenant testified that the Landlord failed to pick up the registered mail and the registered mail was returned to the Tenants. The Tenant provided a copy of a Canada Post registered mail tracking document in support of her testimony regarding service of the Notice of Hearing.

I find that the application for dispute resolution and Notice of Hearing were served in accordance with section 89 of the Act and are deemed to have been received by the Landlord on the fifth day after they were mailed, pursuant to section 90 of the Act.

The hearing proceeded and the Tenant was provided the opportunity to present her evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to compensation from the Landlord?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began on July 1, 2015. Rent in the amount of \$1,500.00 was paid on the first day of each month and that the Tenant paid the Landlord a \$750.00 security deposit.

The Tenant testified that the Landlord issued the Tenants a 2 Month Notice to End Tenancy For Landlord Use of Property but failed to compensate the Tenants in the amount of one month's rent as required by the Act.

The Tenant testified that she received a 2 Month Notice to End Tenancy for Landlord Use of Property dated May 5, 2016, with an effective date of July 31, 2016. The Tenants accepted the 2 Month Notice and moved out of the rental unit on June 30, 2016.

The reason, stated within the 2 Month Notice, for ending the tenancy is that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Tenant provided a copy of the 2 Month Notice.

The Tenant testified that the rental unit was not used for the purpose stated within the 2 Month Notice, and that the Landlord must pay the Tenants the amount of two months' rent under the tenancy agreement.

The Tenant testified that the Landlord listed the rental unit for sale immediately after the Tenants moved out and sold the rental unit. The Tenant provided a copy of a real estate listing which shows the rental unit was listed for sale on July 9, 2016, and was sold on July 12, 2016.

The Tenants are seeking compensation from the Landlord in the amount of \$4,600.00.

### Analysis

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the Landlord on

or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (2) of the Act states that 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord issued a 2 Month Notice To End Tenancy for Landlord Use of Property dated May 5, 2016, and owes the Tenants compensation in the amount of 1 months' rent. I award the Tenants the amount of \$1,500.00.

I find that the Landlord listed the rental unit for sale nine days after the Tenants moved out and the unit was subsequently sold three days later. I find that the Landlord failed to use the rental unit for the purpose stated within the 2 Month Notice for at least 6 months after the effective date of the notice. The Landlord owes the Tenants compensation in the amount of two months' rent. I award the Tenants compensation in the amount of \$3,000.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I find that the Tenants have established a monetary claim in the amount of \$4,600.00 comprised of \$4,500.00 owing for compensation due to the 2 Month Notice and the \$100.00 fee paid by the Tenants for this hearing. I grant the Tenants a monetary order in the amount of \$4,600.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord issued a 2 Month Notice To End Tenancy for Landlord Use of Property and failed to compensate the Tenants. The Landlord also failed to use the rental unit for the purpose state within the 2 Month Notice and therefore the Landlord must compensate the Tenants.

The Tenants are granted a monetary order in the amount of \$4,600.00.

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: March 08, 2017

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Residential Tenancy Branch