



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and her English language translator (collectively "landlord") and the three tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her translator, who is her nephew, had authority to assist her at this hearing. The landlord stated that she had permission to speak on behalf of her parents, who are the "landlord owners" of this rental unit, as she was their agent at this hearing and during the tenancy. This hearing lasted approximately 62 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenants confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 17, 2016 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's 2 Month Notice. The notice was issued in the name of the two landlord owners.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 1, 2008 and ended on July 3, 2016. Monthly rent of \$2,000.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord was provided with verbal permission from the tenants to keep the deposit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$2,000.00, totalling \$4,000.00, plus recovery of the \$100.00 application filing fee. The tenants claim that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, the tenants are entitled to compensation.

Both parties agreed that the tenants moved out pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The reason indicated on the notice is:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord said that the landlord owners of the rental unit issued the 2 Month Notice because they wanted to move into the rental unit. She claimed that the landlord owners moved in on July 4, 2016, for a brief period of about two weeks and found that there were too many damages and the pet odour smell was so awful that after cleaning and repairs were done, the smell was still not eliminated. The landlord maintained that approximately \$10,000.00 worth of renovations were done, including replacing of walls and doors, such that the smell was gone. She stated that the rental unit was listed for sale on August 2, 2016 and then sold on August 13, 2016 to new owners.

The tenants claimed that the landlord always intended to sell the rental unit and that an agreement was signed between the parties on April 27, 2010 confirming this intention. They said that the rental unit was listed in 2010 but never sold, and then they signed another tenancy agreement with the landlord in 2011 to continue renting the unit. The tenants explained that the landlord was looking into contractors to improve the property while the tenants were still in the rental unit and before they vacated.

### Analysis

Section 49(3) of the *Act* reads as follows:

*(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

*51 (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.*

The following facts are undisputed. The tenants vacated the rental unit on July 3, 2016 pursuant to the 2 Month Notice, which was issued by the landlord owners so that they could move in to the rental unit. The landlord owners then sold the property on August 13, 2016 to new owners.

Therefore, I find that the landlord owners breached section 51(2)(b) of the *Act*, as they did not occupy the rental unit for a six-month period after the effective date the notice. Accordingly, I find that the tenants are entitled to double the monthly rent of \$2,000.00 as compensation under section 51, which totals \$4,000.00.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

I find that the landlord named in this application, who appeared at this hearing, is a designated agent of the landlord owners of the rental unit and therefore, this decision and monetary order are properly enforceable against her. As neither party requested to amend the tenants' application to add the landlord owners as respondents to this application, I have not done so without their consent.

### Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$4,100.00, against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 11, 2017

---

Residential Tenancy Branch