



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNR, FF, MNDC, OLC,

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting to recover unpaid rent and /or utilities, and to recover the cost of the filing fee.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and for the Landlord to comply with the *Act*, and to recover the cost of the filing fee.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that the Landlord was served with the Notice of Hearing by registered mail on November 5, 2016. The Tenant testified that status of delivery online shows as delivered. I find that the Landlord was served with the Notice of Hearing in accordance with sections 89 and 90 of the *Act*.

The hearing process was explained and the Tenant was asked if he had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present their 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.

### Preliminary and Procedural Matters

The Landlord applied for Dispute Resolution seeking to recover unpaid rent, but failed to attend the hearing. The Landlord’s Application is dismissed.

Issues to be Decided

- Is the Tenant entitled to other compensation under the Act or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in October 2010. Rent in the amount of \$750.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$325.00.

The Tenant testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 24, 2016 ("the 2 Month Notice")

The Tenant accepted the 2 Month Notice and moved out of the rental unit on August 1, 2016.

Tenants' Application

The Tenant is seeking compensation for the following items:

<u>Compensation for 2 Month Notice</u>	<u>\$725.81</u>
<u>Compensation for breach of section 51</u>	<u>\$1500.00</u>
<u>Dishonest profiteering</u>	<u>\$1800.00</u>
<u>Lost wages</u>	<u>\$80.00</u>
<u>Canada post</u>	<u>\$25.00</u>
<u>Filing Fee</u>	<u>\$100.00</u>

Compensation for 2 Month Notice

The Tenant testified that he received a 2 Month Notice. He initially disputed the 2 Month Notice, but cancelled the dispute and accepted the Notice and moved out. The Tenant provided a copy of the 2 Month Notice.

The Tenant issued the Landlord a 10 Day Notice to end the tenancy dated July 20, 2016. He testified that he handed the Notice to end the tenancy to the Landlord on July 22, 2016. The Tenant provided a copy of the 10 Day Notice to end the tenancy.

The Tenant testified that he paid the rent for July 2016, he moved out of the rental unit on August 1, 2016, and never received compensation from the Landlord in the amount of one month's rent.

Compensation for breach of section 51

The Tenant testified that the Landlord issued the 2 Month Notice in bad faith. He testified that the Landlord did not use the property for himself or for family, but re-rented the unit at a higher amount of rent.

The Tenant provided a copy of an advertisement from a website showing that the unit was for rent in August 2016. The Tenant provided a copy of an audio recording and transcript where the Landlord admitted to re-renting the unit at a higher rent.

#### Dishonest profiteering

The Tenant is seeking compensation in the amount of \$1,800.00 because the Landlord was dishonest and profited from ending the tenancy.

#### Lost wages

The Tenant is seeking \$80.00 for lost wages. The Tenant submitted that he had to miss half a day of work to attend the hearing.

#### Canada Post

The Tenant is seeking to recover the costs for using registered mail.

#### Analysis

Section 50 (1) of the Act states if a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

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:

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

Compensation for 2 Month Notice

I find that the Tenant received a 2 Month Notice from the Landlord and is entitled to one month's rent payable under the tenancy agreement. The Tenant provided 10 days Notice in accordance with section 50 of the Act and moved out on August 1, 2016. The Tenant legally ended the tenancy on August 1, 2016. I find that the Landlord owes the Tenant the equivalent of one month's rent payable under the tenancy agreement.

I find the Landlord owes the Tenant \$750.00.

Compensation for breach of section 51

I find the Landlord failed to use the rental property for the reason stated within the 2 Month Notice. The Landlord re-rented the unit to a new tenant at a higher rent. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Landlord owes the Tenant \$1,500.00.

Dishonest profiteering

The Act does not specifically permit additional compensation to be awarded when a Landlord issues a 2 Month Notice in bad faith. The Act specifically allows compensation of double the monthly rent payable under the tenancy agreement if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

I have already awarded the Tenant compensation for the Landlord's breach of section 49 of the Act. The Tenant's request for an additional \$1,800.00 is dismissed.

Lost wages and Canada Post

The Act does not specifically permit authority to grant compensation for the costs of serving documents for a dispute resolution hearing. The Act gives authority to recover the cost of the filing fee. The Tenants request for lost wages and postage is not compensable under the Act. The Tenants request for compensation for lost wages and postage is dismissed.

Filing fee

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 Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$2,350.00. This monetary 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 failed to compensate the Tenant after issuing a 2 Month Notice and did not use the rental unit for the stated purpose within the Notice. The Landlord must pay the Tenant the amount of three months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$2,350.00.

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: May 18, 2017

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Residential Tenancy Branch