



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of two months' rent as claimed?  
Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy began on October 15, 2012 and ended on August 31, 2016. The monthly rent was \$1350.00. At the outset of the tenancy the tenant provided a security deposit of \$675.00 which has been returned to him.

The tenant gave the following testimony:

On June 16, 2016 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by August 31, 2016. The ground for the Notice was that the rental unit would be occupied by the landlord or the landlord's close family member. The tenant moved out of the rental but alleges that the landlord did not move into the rental unit. The tenant testified that he drives by the house regularly and has noticed junk mail piling up and that the landscaping has not been kept up. The tenant testified that the drapes are always shut. The tenant testified that he is seeking two months' rent as compensation along with the recovery of the filing fee for a total monetary claim of \$2800.00.

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The landlords' agent gave the following testimony:

The agent testified that the landlords' parents occupy the house and have done so since September 26, 2016. The agent testified that the landlord spent the first 26 days of possession cleaning and renovating the home to prepare for the elderly parents. The agent testified that the landlords' parents go out during the day to spend it at their son's restaurant. The agent testified that bills are in their name that shows occupancy and usage. In addition, the agent testified that the basement unit was renovated and a city inspector attended the home to which he could also verify occupancy of the landlords' parents.

### Analysis

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement and pursuant to Section 51 of the Act because he alleges the property was not used for the stated purpose for ending the tenancy.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant has not provided sufficient evidence to support his allegation. The agent was clear, concise and credible when providing testimony that the home has always been occupied by the landlords' parents, and I accept that testimony. The tenant testified that he had witnesses that could prove his claim but did not produce them for this hearing.

Based on the insufficient evidence before me and on a balance of probabilities, I dismiss the tenants' application.

Conclusion

The tenants' application is dismissed in its entirety.

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 15, 2017

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Residential Tenancy Branch