



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF;   MNDC, FF

### Introduction

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

- other remedies, identified as a dispute of the tenant's monetary application; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

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

One of two landlords, landlord EM ("landlord") and the tenant 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 he had authority to speak on behalf of his mother, the other landlord named in this application, as an agent at this hearing. This hearing lasted approximately 54 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 31, 2017 ("2 Month Notice"). The landlord confirmed that the date on the notice was incorrect and should have been June 30, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice.

The landlord confirmed that he did not apply for any specific relief in the landlords' application, besides recovery of the filing fee. He said that he simply applied to dispute the tenant's application for monetary compensation of \$3,600.00. The landlords are not required to file an application in order to oppose another party's claim. They can oppose the claim by providing written evidence in response and verbal testimony at the hearing. Therefore, the landlords' entire application is dismissed without leave to reapply.

### Issues to be Decided

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

Is the tenant entitled to recover the filing fee for her 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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2010 and ended on September 24, 2016. Monthly rent of \$1,750.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and the tenant provided a partial copy for this hearing.

A security deposit of \$850.00 was paid by the tenant to the landlords. I ordered the landlords to return double the value of the deposit to the tenant in a decision, dated November 28, 2016, at a previous Residential Tenancy Branch ("RTB") hearing that occurred on November 23, 2016, for the tenant's monetary application, where only the tenant was present and the landlords were absent. The file number for that previous hearing appears on the front page of this decision.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$1,750.00, totalling \$3,500.00, plus the \$100.00 application filing fee. The tenant stated that because the landlords have not used the rental unit for the purpose on the 2 Month Notice, she is entitled to compensation. The landlords dispute the tenant's application, stating that it was the landlord's initial intention to move into the unit.

The effective move-out date on the 2 Month Notice was August 31, 2017. At the hearing, both parties agreed that the corrected effective date should have been September 30, 2016, based on the date the tenant received the notice and given that both parties called the RTB and were provided with this information.

Both parties agreed that the tenant vacated the rental unit 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 his mother, who is the owner of the rental unit, issued the 2 Month Notice to the tenant because the landlord was supposed to move into the rental unit. He claimed that he has two young children and he wanted them to go to school close to the rental unit. He stated that he then attempted to reverse the 2 Month Notice and allow the tenant to stay because he felt bad that he was displacing the tenant's child from school, but the tenant wanted to move out. The landlord provided a letter, dated July 6, 2016, to the tenant regarding reversal of the notice. The tenant agreed that when she was served with the 2 Month Notice she made arrangements to stay at a new place so she had to vacate. The landlord then claimed that the tenant removed a number of fixtures from the rental unit and in order to prevent further damage, he changed the locks to the rental unit to secure the property and prevent the tenant from re-entering. Both parties agreed that tension escalated between both parties and the police were called. The landlord stated that after the above events, he felt that it was "tainted" to move back into the house so he decided not to and he re-rented the unit.

Both parties agreed that the landlord had a new tenant move into the rental unit after the tenant vacated. The landlord said that this occurred on November 1, 2016. He explained that a rental advertisement was posted on October 6, 2016, to re-rent the unit for \$2,500.00. The tenant provided a copy of the advertisement. He said that was a short term rental of six months, after which a new tenant moved in and continues to live there now.

### Analysis

Residential Tenancy Policy Guideline 11 states the following, in part:

*A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.*

In this case, the landlords attempted to withdraw the 2 Month Notice but the tenant did not consent and moved out pursuant to the 2 Month Notice. The landlord cannot unilaterally withdraw the notice. Therefore, the 2 Month Notice was not cancelled and was still in full force and effect when the tenant vacated. The landlord even provided the tenant with one month's free rent compensation under section 51(1) of the Act pursuant to the 2 Month Notice.

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 a tenant is 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 tenant vacated the rental unit on September 24, 2016, pursuant to the 2 Month Notice, which was issued by the landlords for the

landlord to move into the rental unit. The landlord did not move into the rental unit and still has not done so. The landlord has not taken steps to accomplish this move into the rental unit, nor did he use the rental unit for that purpose. The landlord re-rented the unit on November 1, 2016 to present.

Therefore, I find that the landlords breached section 51(2)(b) of the *Act*, as they did not take steps or use the rental unit for the landlord to occupy within six months or a reasonable period of time after September 30, 2016. Accordingly, I find that the tenant is entitled to double the monthly rent of \$1,750.00 as compensation under section 51, which totals \$3,500.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$3,600.00, against the landlord(s). The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The landlords' entire application is dismissed without leave to reapply.

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: July 07, 2017

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Residential Tenancy Branch