



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant has applied pursuant to the *Residential Tenancy Act* (“Act”) for:

- for a monetary order pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Only the tenant appeared at the hearing. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant provided undisputed testimony that her application for dispute resolution and evidentiary package were sent to the landlord by way of Canada Post Registered Mail on March 2, 2017. The Canada Post tracking number was provided to the hearing. She stated that the address used for service was the address listed on the 2 Month Notice to End Tenancy. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the documents and the tenant’s application on March 7, 2017.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

The tenant provided undisputed testimony that this tenancy began on August 1, 2014 and ended on October 31, 2016. Rent was \$1,650.00 per month, and a security deposit of \$825.00, collected at the outset of the tenancy was returned to the tenant. The tenant described, that on September 8, 2016 she received a 2 Month Notice to End Tenancy for Landlord’s Use of Property from the landlord. She said that the landlord had

explained to her that he was going through a divorce and required the use of his home. The tenant said her and her family found alternative accommodations starting November 1, 2016. She noted that no rent was paid for October 2016, and that the property was vacant by November 12, 2016.

On, or around November 19, 2016 the tenant's son explained to her that he had seen their former home with a For Sale sign displayed in its front yard. In her written submissions and oral testimony, the tenant described how she did not want to jump to any conclusions and detailed a conversation she had with her husband. This conversation centered on the fact that the home had not been sold. Shortly after this conversation, the tenant saw the property listed for rent on a website. She contacted the real estate agent listed on the website displaying the property. The tenant provided undisputed testimony that the real estate agent confirmed that the home was for rent. As part of her evidentiary package, the tenant has placed a copy of the real estate agent's contact information with the property's location detailed above his information.

During the course of the hearing, the tenant described how she then contacted the neighbours with whom she was friendly. She said that the neighbours recounted that the landlord had only briefly returned to the home to perform some light cleaning, but they were certain he was not residing in the property.

### Analysis

The tenant has also applied for a monetary award of \$3,300.00. She is seeking this amount in satisfaction for vacating a rental unit after having been issued a 2 Month Notice to End Tenancy based on the landlord's use of property.

Section 51(1) of the *Act* states, "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." Testimony was provided to the hearing that the landlord fulfilled this requirement of the *Act* and provided the tenant with free rent for October.

The second portion of section 51 of the *Act* states, "In addition to the amount payable under subsection (1) [above], if 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 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, 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.”

I am satisfied based on the evidence before me and the testimony provided by the tenant that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. The tenant submitted undisputed oral testimony and written evidence in the form of an online advertisement showing her exact former unit for rent, along with the contact information of a real estate agent almost immediately following the date she vacated the unit.

As the tenant was successful in her application, she may recover the filing fee associated with the application.

#### Conclusion

I issue a Monetary Order in the tenant’s favour in the amount of \$3,400.00 against the landlord. The tenant is 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.

<b>Item</b>	<b><u>Amount</u></b>
Penalty for 2 month notice (2 x \$1,650.00)	\$3,300.00
Recovery of Filing Fee	100.00
<b>Total =</b>	<b>\$3,340.00</b>

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 21, 2017

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Residential Tenancy Branch