



# 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 tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted the first of two documentary evidence packages via Canada Post Registered Mail on April 9, 2017. The landlords disputed receiving the second of two documentary evidence packages from the tenants as well as stating that the landlords were out of the country at the end of July 2017. The tenants provided undisputed affirmed testimony that the second documentary evidence package was served to the landlords via Canada Post Registered Mail on July 28, 2017 and have provided copies of the Canada Post Customer Receipt Tracking label and receipt as confirmation. The tenants also stated that an online search using the Tracking number shows that the package was received and signed for on August 1, 2017. As this issue of service was disputed, both parties consented to the arbitrator reviewing the Canada Post website's online search feature regarding this package. The review confirms the tenants claims that the package was received for processing on July 28, 2017 and signed in receipt of on August 1, 2017 with the initials, G.S. As such, I find based upon the evidence provided by the tenants that service of the second documentary evidence package was properly served as per sections 88 and 89 of the Act. I also find based upon the undisputed evidence of both parties the notice of hearing package and the initial documentary evidence package were properly served as per sections 88 and 89 of the Act via Canada Post Registered Mail on April 9, 2017.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the Act and recovery of the filing fee?

### Background and Evidence

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

This tenancy began on August 1, 2013 for 1 year on a fixed term tenancy ending on July 31, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 19, 2013. The tenants clarified that this was an obvious error on the end date as the agreement was signed on July 19, 2013 and began on August 1, 2013. The tenants agreed that the end date should have been written as July 31, 2014. The monthly rent was \$1,275.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$600.00 was paid.

The tenants clarified that they seek a monetary claim of \$2,550.00 which consists of:  
\$2,550.00    Sec. 51 Compensation, Failing to Comply with Sec. 49 Notice

Both parties confirmed that the tenants were served with a 2 Month Notice for Landlord's Use of Property dated July 5, 2016 which displays an effective end of tenancy date of September 30, 2016 and that stated reason was:

*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 tenants provided affirmed testimony that for atleast a 6 month period following the effective date of the notice the landlords have failed to occupy the property as per the 2 Month Notice. The tenants stated that they have many friends still residing in the area and were informed that the rental property looks exactly the same and that it is unoccupied. The tenants also claim that an online ad was found as per the printout of an online ad using the rental property address showing an ad to rent the premises dated April 22, 2017.

The landlords argued that the original intention was for her son to move into the rental unit due to personal issues, but that due to these personal issues that did not occur. The landlords stated that her son did eventually move into the property in November 2016, but subsequently moved out. The landlords confirmed that as a result the landlords re-advertised the unit for rent as claimed in April 2017.

### Analysis

Section 51 (2) of the Act states in part that 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 the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is equivalent of double the monthly rent.

In this case, I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlords. Both parties confirmed that the landlords served a 2 Month Notice to End Tenancy issued for Landlord's Use of Property with the stated reason of having the rental unit occupied by the landlord or a close family member. In this case the landlords claim that the rental unit was occupied on a short term basis before the property was subsequently re-advertised for rent in April 2017. I find on this basis that the tenants have established a claim under section 51 of the Act that the landlords failed occupy the rental unit and have since re-advertised the unit for rent which is contrary to the stated purpose provided on the notice.

Doubling of the monthly rent of \$1,275.00 is \$2,550.00. The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenants are granted a monetary order for \$2,650.00.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the 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: September 25, 2017

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Residential Tenancy Branch