



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNR, O

### Introduction

The tenants apply to recover the equivalent of two months' rent claiming the landlords failed to occupy the rental unit for a period of six months following the effective date of a two month Notice to End Tenancy for landlord use of property.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Did the landlords occupy the rental unit for the purpose stated in the Notice for a period of at least six months following the effective date of the Notice?

### Background and Evidence

The rental unit is the three bedroom upper floor of one side of a duplex. The tenants moved in under earlier landlords in March 2015. The respondents purchased the property in May 2017.

The last rent was \$1543.50 per month, due on the first of each month.

On July 11, 2017 the tenants received the two month Notice in question. It is in the statutory form and gives an effective date to end the tenancy on September 30, 2017. The grounds for the Notice are that the landlords or a close family member would occupy the rental unit.

The tenants found another accommodation right away and so gave the landlords the short notice permitted a tenant by s. 50 of the *Residential Tenancy Act* (the “Act”) in these circumstances. They moved out on August 1.

The landlords’ circumstances were that they had been living out of province. Prior to giving the two month Notice they had purchased a home under an agreement of purchase and sale that closed in October 2017 but which contained a term that the vendor would rent back the home until mid-January 2018. The landlord Mr. L. testified that they intended to remain in the rental unit even after that while they conducted renovations to the new home.

The landlords would need a place to stay until their vendor moved out in 2018 and so, intending to stay in the rental unit, they issued the two month Notice.

On or about August 7, the landlords’ vendor attempted to alter the agreement of purchase and sale, stating that there would be no rental period following the closing. It appears the landlords acquiesced to this variation. They did not move into the rental unit. They re-rented it starting September 1, 2017.

### Analysis

I accept the landlords’ version of events and understand the unfortunate circumstances in which they found themselves.

There is no reason to suspect that the two month Notice was not given in good faith.

However, intention and good faith are not ingredients in the penalty provision found in s. 51(2) of the *Act*. It provides:

- (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.

In this case the fact of the matter is that the premises were not used for the stated purpose of landlord occupation for at least six months beginning within a reasonable period after the effective date of the Notice, or at all.

The tenants are entitled to recover the double rent penalty: \$3087.00. There is no claim for recovery of a filing fee.

### Conclusion

The tenants' application is allowed. They will have a monetary order against the landlords in the amount of \$3087.00.

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: November 11, 2017

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Residential Tenancy Branch