



# 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 damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and the parties' respective evidentiary materials. The landlord confirmed receipt of the tenant's materials. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence and the tenant was duly served with the landlord's evidence.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed? Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The parties agreed on the following facts. The monthly rent for this tenancy was \$1,500.00. This tenancy ended on July 31, 2017 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated May 30, 2017 (the "2 Month Notice"). The landlord indicated the reason for the 2 Month Notice as "the rental unit will be occupied

by the landlord or the landlord's close family member". The tenant moved out in accordance with the 2 Month Notice and withheld the last month's rent in accordance with section 51(1.1) of the *Act*.

The landlords gave evidence that they originally intended to move into the rental unit as they were selling their principle residence. The sale of the landlords' principle residence was scheduled to complete on August 2, 2017. However, that sale did not complete as scheduled due to circumstances beyond the landlord's control. The landlords extended the closing date to April 1, 2018. The landlords said that they advertised the rental property seeking new tenants as they wanted to ensure it was occupied and maintained. The landlords made arrangements with their neighbors to have them tend to the rental unit and thereafter took the advertisements down. The landlords gave evidence that they performed some renovations to the rental property but the property has been unoccupied since the tenants moved out.

The landlord testified that as at the date of the hearing, March 1, 2018 their daughter was in the process of moving into the rental unit. The landlords gave evidence that the sale of their principle residence is still scheduled to complete on April 1, 2018.

### Analysis

Section 51(2) of the *Act* states that 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 the 2 Month Notice the landlord indicated that the tenancy is ending as the rental unit would be occupied by the landlord or a close family member. The undisputed evidence of the parties is that the landlord did not occupy the rental unit as the sale of their principle residence did not complete in 2017. The landlord gave evidence that a number of circumstances outside of their control prevented them from occupying the rental unit as they intended.

The landlords argue that they acted in good faith and the fact that the rental unit was not occupied by the landlords or a close family member earlier was due to circumstances outside of their control. While I understand that the landlord experienced unforeseen developments that delayed their original plans, I find that these circumstances do not affect the tenant's right to compensation under section 51 of the *Act*.

The *Act* is clear in that a tenant is entitled to a monetary award if steps have not been taken to accomplish the stated purpose or the rental unit is not used for that stated purpose within a reasonable period after the effective date of the notice. Factors such as the delayed sale of the landlords' principal residence, illness, or family circumstances are not material to whether the tenant is entitled to compensation. Furthermore, I find that the reasons cited by the landlords as to why they did not occupy the rental property earlier to be unconvincing. Even if the sale on their principle residence was delayed, the landlords could have moved into the rental unit during the months after the tenants vacated or allowed their daughter to occupy the unit. In the case at hand the undisputed evidence provided is that the property was not occupied by the purchaser or a close family member until March 1, 2018, seven months after the effective date of the 2 Month Notice.

I find that seven months is an unreasonable period of delay for the landlords to take steps to accomplish the stated purpose for ending the tenancy. Therefore, the tenants are entitled to a monetary award of \$3,000.00, double the amount of the monthly rent.

As the tenants were successful in their application they may also recover the \$100.00 filing fee.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,100.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this 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: March 1, 2018

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Residential Tenancy Branch