



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC O

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and "other" which was to recover the cost of the filing fee. The tenants are seeking compensation of two month's rent due to the landlord failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 28, 2017 ("2 Month Notice") for a minimum of six months as required by the *Act*.

The tenants and the landlord attended the teleconference hearing. The tenant gave affirmed testimony however the landlord called into the hearing five minutes late and hung up after stating that he was not happy that a different tenant was successful regarding a similar application earlier on the same date and that "I didn't know I couldn't re-rent and didn't intend to screw anyone around". After disconnecting from the hearing, the landlord did not call back into the hearing and as a result, I consider the landlord to be sufficiently served as he called into the hearing. I also consider this matter to be unopposed by the landlord as the landlord failed to remain in the hearing to have his evidence heard and considered and instead, called into the hearing five minutes late and stated the above information before disconnecting from the hearing without the opportunity to be affirmed.

### Preliminary and Procedural Matters

As the tenant provided an email address in his application, the tenant will be provided the decision and monetary order by email. The landlord will be sent the decision by regular mail as an email address for TW was not included in the application or provided by the landlord.

### Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The tenant testified that a month to month tenancy existed and that monthly rent was \$1,750.00. The tenant testified that he vacated the rental unit on July 31, 2017 after being served with the 2 Month Notice which indicates the reason to end tenancy as:

“The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.”

[Reproduced as written]

The 2 Month Notice was submitted in evidence. The tenant stated that the landlord wrote the following in handwriting on the 2 Month Notice after the above reason which reads:

“or demolish if necessary”

[Reproduced as written]

The landlord did not check off the reason that reads “The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

The landlord submitted a document in evidence which indicates that during the first week of August, the demolition was delayed due to weather. The landlord writes as follows:

“...we rented out to new tenants as we awaited demolition in spring of 2018.”

[Reproduced as written]

The tenant testified that the landlord re-rented to new tenants as of September 1, 2017 contrary to the reason indicated on the 2 Month Notice. The tenants are seeking

compensation of two month's rent due to the landlord failing to comply with the reason indicated on the 2 Month Notice.

### Analysis

Based on the documentary evidence and the undisputed tenant's testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Section 51(2) of the *Act* applies and states:

**(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.**

[My emphasis added]

As the documentary evidence before me from the landlord supports that the landlord re-rented the rental unit within six months of the tenants vacating the rental unit, I accept the tenant's testimony that the landlord re-rented the rental unit contrary to the reason stated on the 2 Month Notice on or about September 1, 2017. I find the landlord failed to use the rental unit for the stated purpose for at least six months as required by the *Act*. Therefore, I find the landlord breached the *Act* by re-renting in slightly more than one month from when the tenants vacated and that the landlord failed to wait at least six months as required by the *Act*. I find the landlord owes the tenants **\$3,500.00** which is double the \$1,750.00 monthly rent pursuant to section 51(2) of the *Act*.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenants have established a total monetary claim of **\$3,600.00** as described above. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,600.00** accordingly.

In addition to the above, I note that the landlord modified the 2 Month Notice by writing "or demolish if necessary" which is not permitted under the *Act* and is contrary to section 52(e) of the *Act* which requires that 2 Month Notices be in the prescribed form.

**I caution** the landlord to use the prescribed forms in the future without modifying the prescribed forms.

**I caution** the landlord not to use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

### Conclusion

The tenants' application is fully successful.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenants have met the burden of proof and have established a total monetary claim of \$3,600.00. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,600.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned twice as described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 19, 2018

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Residential Tenancy Branch