



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's 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 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:08 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that she sent a copy of the Notice of Hearing package to the landlord by registered mail on October 17, 2017. The tenant also submitted documentary evidence in support of her testimony, including a Canada Post registered mail receipt with tracking number and the tracking report showing that the package was signed for by the landlord on October 18, 2017. Therefore, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The tenant testified that the tenancy began on October 2, 2009. The tenant rented a two-bedroom basement rental unit in the landlord's home. The landlord and his family reside in the upstairs level of the home. Rent in the amount of \$700.00 was due by the first day of each month. The tenant paid the landlord a security deposit of \$350.00 at the beginning of the tenancy and the tenant confirmed that this security deposit was returned to the tenant when the tenancy ended.

The tenant testified that the landlord served her with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) on April 30, 2017 with an effective vacancy date of July 1, 2017. The tenant submitted the notice as documentary evidence. On page 2 of the Two Month Notice, the landlord selected the following ground as the basis for the Notice:

- 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 tenant testified that the landlord had verbally told her that they wanted the rental unit in order to provide their daughter, who is a single mother living with them, more space. The tenant accepted the Two Month Notice but found that as a single mother she had a great deal of difficulty finding another rental unit. She asked the landlord for more time to find another rental unit and the landlord agreed to allow her more time.

The tenant testified that she finally found a new rental unit and provided the landlord with notice on August 21, 2017 that she would move out on September 1, 2017, which was agreed to by the landlord.

The tenant provided undisputed testimony that she never received compensation from the landlord in the amount of one month's rent, pursuant to section 51(1) of the Act.

The tenant is also seeking compensation in the amount of two months' rent because the landlord did not use the rental unit for the purpose stated on the Two Month Notice for at least six months beginning within a reasonable period after the tenant moved out.

The tenant testified that within one month of her moving out, her former neighbours contacted her to tell her that the rental unit was for rent again. The tenant walked by the property and saw a "For Rent" sign in the window of her former rental unit. The tenant

took a picture of the window with the sign in it and submitted this as documentary evidence in support of her claim. She stated that a friend called the contact number provided on the sign to confirm that it was the two-bedroom basement suite for rent. The tenant stated that the new rental amount was \$1,250.00 per month.

The tenant then filed her application for dispute resolution on October 10, 2017 and served the landlord with notice approximately one week later. The tenant stated that after the landlord was served with the notice of the dispute hearing, the "For Rent" sign was taken down.

However, the tenant testified that at the beginning of December 2017 she was informed by a friend that the "For Rent" sign was back in the window. The tenant testified that she walked by the property and confirmed this. At the hearing, the tenant provided undisputed testimony that her former neighbours told her that the rental unit has been rented out to someone else for the past several months. The unit is accessed by a separate entrance, and the tenant explained that her former neighbours have seen someone coming and going from the rental unit. As well, the tenant testified that she has seen a car parked at the rental unit that does not belong to the landlord's family.

### Analysis

Section 51 (1) of the *Act* states that 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.

I accept the tenant's undisputed testimony that her monthly rent was \$700.00, that she received a Two Month Notice from the landlord, and that she never received compensation from the landlord equivalent to one month's rent. Therefore, I find that, on a balance of the probabilities, the landlord owes the tenant the equivalent of one month's rent payable under the tenancy agreement. I award the tenant the amount of \$700.00 in compensation for this aspect of her claim.

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

*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.*

Based on the tenant's submitted documentary evidence showing a "For Rent" sign in the window of the rental unit; the tenant's undisputed testimony that a friend called and confirmed the rental unit was available for rent at the higher rental amount of \$1,250.00; and on the balance of probabilities; I find that neither the landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the tenant moved out. Therefore, pursuant to section 51(2) of the Act, I find that the landlord failed to use the rental property for the reason stated on the Two Month Notice and must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement, which in this case is \$1,400.00.

In summary, I grant the tenant a monetary order in the amount of \$2,100.00 as compensation the tenant is entitled to pursuant to section 51 of the *Act*.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2,100.00. The tenant is provided with this 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.

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: May 11, 2018

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Residential Tenancy Branch