



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The Tenant states the following: The tenancy of one side of a duplex, under written agreement with a previous landlord, started in 2012 or 2013. The previous landlord ended the tenancy by serving the Tenant with a two month notice to end tenancy for landlord’s use (the “Notice”) on July 31, 2017. The effective date of the Notice was October 1, 2017 and the Tenant moved out on that date. Although the Notice indicates that the landlord would be moving into the unit the Tenant was told by the previous landlord at the time the Notice was served that the unit had been sold, that the purchaser was going to move into the unit and that the purchaser asked the previous

landlord to end the tenancy for that reason. Rent of \$985.00 was payable on the first day of the tenancy. The security deposit has been dealt with.

The Landlord agrees that the unit was purchased by the Landlord prior to July 31, 2017, that the Landlord intended to move into the unit and that the Landlord asked the previous landlord to end the tenancy for that reason. The Landlord states that his possession date for the unit was October 1, 2017. The Landlord states that both sides of the duplex were purchased and that the tenants in the other duplex were also given a notice to end the tenancy for the same reason.

The Tenant states that on October 24, 2017 a neighbour told her that the unit was being advertised for rent for \$1,500.00 monthly. The Tenant states that a new tenant moved into the unit for November 1, 2017 at that rental rate. The Tenant states that she knows the new tenant. The Tenant claims compensation as provided under the Act.

The Landlord states that they intended to take possession and occupation of both duplexes. The Landlord states that they intended to live in one side of the duplex while the other was being renovated. The Landlord states that he had lined up employment in the city where the unit was located to start on October 15, 2017. The Landlord provides a copy of an unsigned, undated, incomplete, letter of employment. The Landlord states that following a bike accident in March 2016 the Landlord had developed PTSD and that this became worse on October 8, 2017. The Landlord states that his psychologist recommended that the Landlord not move in order to stay closer to his psychologist for help and that for this reason the Landlord did not move into the unit. The Landlord states that his employment hours were reduced for the period October 2017 to sometime near the end of February 2018 as a result of the PTSD and that in order to make the mortgage payments on the duplexes the Landlord had to rent both units out. The Landlord states that he was not aware of the detail of the tenancies at the time of the purchase. The Landlord states that after recovering from the PTSD the

Landlord still could not move into the unit as he entered into a one year fixed term tenancy agreement for the new tenants with an end date of November 1, 2018.

The Tenant states that when the Notice was served the Tenant believed that the purchaser had the good faith intention to move into the unit. The Tenant states that she was nearly homeless after not being able to find another home because there were very few rentals available and the Tenant had pets. The Tenant states that she experienced a lot of stress and worry until she found another tenancy with a family member in the last two weeks of the tenancy.

### Analysis

The Tenancy Statutes Amendment Act (the "TSAA") amended the Act's compensation provisions where a landlord does not use a rental unit for the stated reason on a two month notice to end tenancy for landlord's use. The new provisions provide for compensation of the equivalent of 12 months' rent. These provisions came into force on May 17, 2018 and apply to any notices to end tenancy for landlord's use received by a tenant after 00:00:01 am on May 17, 2018. As the Notice was received by the Tenant prior to the TSAA amendments I find that the previous sections of the Act still apply to this dispute as set out below:

Section 51(2) of the Act provides that if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. These provisions do not provide for consideration of any extenuating circumstances that might allow a landlord to use the

unit for any different purpose. As such the landlord's evidence of PTSD is not relevant to the determination of compensation.

Given the Landlord's agreement that the unit was purchased by the Landlord prior to the issuance of the Notice and that the Landlord asked the previous landlord to end the tenancy of the unit in order for the Landlord to move into the unit, I find that the reason selected on the Notice was checked off in error and that the Notice was issued as the purchaser, the current Landlord, intended in good faith to occupy the unit.

Based on the undisputed evidence that the Landlord rented the unit after the end of the tenancy I find that the Tenant has substantiated that the unit was not used for the stated purpose of the Notice. The Tenant is therefore entitled to compensation equivalent to two months' rent in the amount of **\$1,970.00**. (\$985.00 x 2). As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,070.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,070.00**. If necessary, this order may be filed in the Small Claims 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: June 14, 2018

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Residential Tenancy Branch