



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation from the Landlords in the amount of two months' rent pursuant to section 51(2) of the *Residential Tenancy Act* and to recover the filing fee.

The hearing was conducted by teleconference on June 6, 2018. The Tenants C.L. and D.A. called into the hearing as did the Landlord K.K. The participants in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

By Amendment dated May 18, 2018 the Tenants sought to increase their claim to \$35,000.00. The basis of this increase was their request for 12 month's compensation pursuant to section 51(2) of the *Act*, which was amended since the filing of the Tenant's Application. As that section came into force on May 17, 2018—more than two years after the 2 Month Notice to End Tenancy for Landlord's Use was issued, it is not

applicable to the application before me. The maximum entitlement pursuant to section 51(2) at the time the Notice was issued was two months.

### Issues to be Decided

1. Are the Tenants entitled to two months' rent pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenants recover the filing fee?

### Background and Evidence

The Tenant, C.L., testified as follows. She confirmed that each Tenant had their own tenancy agreement with the Landlord which provided that they each paid the following monthly rent:

- A.R.: \$1,260.00
- C.L.: \$1,260.00;
- D.A.: \$700.00; and
- B.H.: \$750.00

The parties attended a previous hearing and by Decision dated October 28, 2015 they reached a comprehensive settlement as follows:

1. The tenants agreed to withdraw their applications.
2. The landlords agreed to withdraw the 1 Month Notice.
3. The tenants agreed to vacate the rental units on or before one o'clock in the afternoon on 7 November 2015.
4. The landlords agreed that no rent would be payable by the tenants for their use and occupancy of the rental unit 1 November 2015 to 7 November 2015.
5. The tenants acknowledged that they had received their compensation pursuant to subsection 51(1) of the Act.

(The file numbers for the above settlement are noted on the unpublished cover page of this my Decision.)

C.L. stated that they moved from the rental property between November 7-10, 2015. The Tenants applied for dispute resolution shortly before the two year limitation imposed by section 60 of the *Act*.

The Tenants allege that the rental property was not used for the stated purpose and consequently seek compensation in the amount of 2 month's rent pursuant to section 51(2) of the *Act*. The 2 Month Notice to End Tenancy for Landlords' Use was issued on August 27, 2015 and which provided the stated purpose of the Landlords' request to end the tenancy as follows:

#1 The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant AND UPON COMPLETION OF REPAIR (REFER TO #2)

#2 The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

[Reproduced as written]

C.L. testified that the reason for the Tenants being evicted was that the rental unit had to be vacated because the City in which the rental unit was located made an order that the rental unit was to be converted back to a single family dwelling. As I informed the parties during the hearing, this was the reason cited on the 1 Month Notice to End Tenancy for Cause which was withdrawn by the Landlords when the settlement was reached in October 2015.

The Tenant also stated that she has observed the rental property and believes that the Landlords did not do the repairs as cited in the 2 Month Notice. She also submitted that it is her belief that the Landlords did not reside in the rental unit as was claimed on the 2 Month Notice.

In support of their Application the Tenants also provided a letter from the neighbour, who writes that she has not observed any renovations being done. She also writes "it remains unclear who lives at [the rental unit]". She notes that in the "early summer of 2016, she approached "someone" who "appeared to be living there" about a fence. The writer indicates this person advised they were not the owner, but there to "help out the landlord".

The Tenant stated that the proposed renovations included the exterior doors, and the elimination of the back enclosure, which from her observations are still there.

In response to the Tenants' submissions, the Landlord, K.K., testified as follows.

K.K. stated that prior to issuing the 2 Month Notice to End Tenancy the Landlord and her family were living in another property. K.K. confirmed that that home was sold at the end of November 2015 such that they moved into the subject rental property.

K.K. confirmed that the proposed repairs at the time the tenancy was ended included:

- removing the illegal suites, including the kitchen;
- upgrading the house by getting it cleaner and brighter;
- painting the inside;
- removing the flooring;
- renovating the space to be “newer”; and,
- renovating the exterior.

K.K. further stated that she and her spouse and their children moved into the rental unit as planned and are currently living in the basement while they fix up the upstairs. She also stated that they are currently painting the outside of the house and fixing the porch but have had to wait for the wood to dry.

K.K. further testified that she has not rented the rental units out to any other person since the subject tenancy came to an end. K.K. confirmed that since the tenancy ended she has resided in the rental property with, her husband, A.S. and their two children have resided in the rental.

K.. further stated that originally the house belonged to her husband, A.S., and her brother, T.K., the other named Landlord. K.K. was (at the time of the tenancy) the property manager and went on title to the rental property in January of 2016.

K.K. confirmed that they have had friends helping them with the renovations. She stated that it is possible one of those friends spoke with the neighbour in the summer of 2016.

K.K. said they still have interior renovations to complete including patching and painting, changing toilets and continued updates. K.K. claimed that the renovations have been a lot more expensive than they anticipated and they have had to “count their pennies” and really budget to get the work done.

### Analysis

The Tenants make their application pursuant to section 51 of the *Act* which reads as follows:

**Tenant's compensation: section 49 notice**

**51** (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

The Tenants allege that steps have not been taken to accomplish the stated purpose for ending the tenancy and that the rental unit has not been used for the stated purpose on the notice to end tenancy.

After careful consideration of the evidence before me, the testimony of the parties, and on a balance of probabilities I find that the Tenants' Application should be dismissed.

I find the Tenants have failed to prove that the Landlord did not use the rental unit for the stated purpose.

I accept the Landlord's evidence that they have been working on the interior of the rental unit since ending the tenancy. I also accept her evidence that the proposed renovations were more expensive than anticipated and that they have not been able to complete the renovations as quickly as they had originally hoped. I also accept her evidence that they have not rented the unit to others and have in fact resided in the unit since the subject tenancy ended.

The Tenants submit photos of the rental unit which show the exterior renovations are incomplete. The Landlord conceded this was the case and stated that they are continuing to work on the property starting with the interior and then moving to the exterior.

The Tenants also submitted a very general letter from a neighbour who writes that “sometime” in the early summer of 2016 she spoke to “someone” who “appeared to be living at the rental unit”. The neighbour further writes that the person stated they were there to help out the landlord. This letter does not conclusively prove that the Landlords rented the rental unit to others. Further, the tenancy ended in November 7, 2015 such that the early summer of 2016 would have been well past the 6 months contemplated by section 51 of the *Act*.

Section 51(2) exists to discourage landlords from improperly ending tenancies when the real purpose is to rent out to others at a higher price. Colloquially such evictions have been called “renovictions”. The case before me is not one of those situations. I find the Landlords have taken steps to accomplish the stated purpose for ending the tenancy and I further find that the rental unit has been used for the stated purpose on the notice to end tenancy.

I therefore find the Tenants have failed to prove their entitlement to compensation of two month’s rent.

### Conclusion

The Tenants application is dismissed.

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 15, 2018

---

Residential Tenancy Branch