



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 20, 2018 (the “Application”). The Tenants sought \$3,700.00 compensation under section 51 of the *Residential Tenancy Act* (the “Act”). The Tenants also sought reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with her husband who was a co-owner of the rental unit. I explained the hearing process to the parties and nobody had questions when asked. All parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that she received the hearing package other than a copy of the Application. She said she called the Residential Tenancy Branch two weeks prior to the hearing and obtained a copy of the Application. The Landlord confirmed she had sufficient time to prepare for the hearing and did not seek an adjournment. The Landlord confirmed she received the Tenants’ evidence and raised no issues in this regard.

Tenant R.K. testified that the Tenants did not receive a copy of the Landlord’s evidence. The Landlord testified that she served the evidence on the Tenants by Canada Post express delivery on July 10, 2018. She provided Tracking Number 1 as noted on the front page of this decision and I looked this up on the Canada Post website with the permission of the parties. She also provided the address the package was sent to which was the Tenants’ address. The Canada Post website shows a notice card and final notice were left indicating the package could be picked up. Tenant R.K. testified

that the Tenants did not receive the package or a notice card in the mail. The Landlord had not submitted evidence to support her testimony regarding service of the evidence.

I heard from the parties on the issue of excluding the evidence or adjourning the hearing to allow the Landlord to re-serve the evidence on the Tenants and provide evidence of service. Tenant R.K. submitted that she would like to see the evidence and that it should be excluded. Tenant R.K. opposed an adjournment. The Landlord sought an adjournment to re-serve the evidence or provide evidence of service.

I determined that an adjournment was not appropriate in the circumstances as parties are expected to be prepared to prove service at the hearing pursuant to rule 3.16 of the Rules of Procedure (the “Rules”). I excluded the Landlord’s evidence as I was not satisfied it was served on the Tenants in accordance with the *Act* and Rules given the conflicting evidence on this point and the lack of evidence to support the Landlord’s position.

I proceeded with the hearing. All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to \$3,700.00 compensation under section 51 of the *Act*?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenants had submitted a written tenancy agreement and the parties agreed it is accurate. It is between the Landlord and Tenants regarding the rental unit. The tenancy started August 1, 2017 and was a month-to-month tenancy. Rent was \$1,850.00 per month. The agreement is signed by the Landlord and Tenants.

Both parties agreed the Tenants moved out of the rental unit December 31, 2017.

The Tenants had submitted a Two Month Notice to End Tenancy for Landlord’s Use of Property dated November 1, 2017 (the “Notice”). It is addressed to the Tenants. It had

an effective date of January 1, 2018. The grounds for the Notice are that “[all] of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”.

Both parties agreed the Notice submitted is accurate. Both parties agreed the Notice was served on the Tenants by email November 9, 2017.

Tenant R.K. testified as follows. The Tenants moved into the rental unit August 1, 2016. The Landlord told them the plan was to sell the rental unit but not for a couple of years. The Tenants renewed the tenancy agreement August 1, 2017 on a month-to-month basis. The Landlord subsequently asked the Tenants if they could move out. The Tenants asked that this request be sent in writing. The Tenants received the Notice. After they moved out, the Tenants noted that the windows of the rental unit were boarded up. The windows continue to be boarded up. Nobody ever moved into the rental unit.

The Landlord testified as follows. It was made clear to the Tenants when they rented the unit that it was an investment property for the Landlord. The Tenants knew the property was being sold to a developer. The Tenants were advised about the January move-out date August 6th. Tenant R.K. asked if the buyers were interested in having renters and the Landlord was clear that the purchasers did not and wanted the unit vacant. The Tenants knew the property was being sold for development. Tenant R.K. sent her the RTB-32 form asking that she fill it out. She did not know what the form was. Tenant R.K. told her she needed to sign the form if she wanted the Tenants to move out. She signed the form and sent it to the Tenants. She made a clerical error on the form and checked the wrong box.

In response to questions from me, the Landlord testified as follows. The rental unit has been sold. The purchaser never asked the Landlord in writing to give the Tenants the Notice because the purchaser or a close family member intended to occupy the rental unit. She does not know which box on the Notice should have been checked because the options were not relevant in the circumstances and there was no place to write an explanation. She ticked the box indicated on the Notice and sent it off. She wanted to provide the Tenants with enough notice legally.

## Analysis

Pursuant to rule 6.6 of the Rules, the Tenants as applicants have the onus to prove their claim on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

Section 44 of the *Act* sets out the ways in which a tenancy ends. A tenancy must be ended in accordance with this section of the *Act*.

Section 49 of the *Act* allows a landlord to end a tenancy for landlord’s use of property only in the specific circumstances outlined in this section.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act* 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.

The above is also stated on the second page of the Notice.

The following was not in dispute. The Landlord served the Tenants with the Notice. The grounds for the Notice were stated as “[all] of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”. The Tenants vacated the rental unit December 31, 2017. Rent at the time was \$1,850.00.

I do not accept the Landlord's submission that the ground checked in the Notice was simply a clerical error. When asked what ground should have been checked, the Landlord could not point me to which one and said none applied. This is because the Landlord did not have grounds to end the tenancy under section 49 of the *Act* in the circumstances she has described.

The Landlord admitted that the ground indicated in the Notice was not accurate even at the time the Notice was issued. In these circumstances, I find 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. Therefore, pursuant to section 51(2) of the *Act*, the Landlord must pay the Tenants an amount equal to double the monthly rent of \$1,850.00.

The submission that Tenant R.K. is the one who sent the Landlord the Notice to complete is not relevant. The Tenants had a right to ask the Landlord to end the tenancy in accordance with the *Act*. The Landlord should have known her obligations in this regard.

Nor is it relevant that the Landlord did not know what the RTB-32 form was. The Landlord is expected to know her obligations under the *Act* just as the Tenants are expected to know theirs.

The submission that the Tenants knew the rental unit was being sold to a developer is not relevant. The Landlord was required to end the tenancy in accordance with the *Act*. The Landlord chose to do so through the Notice indicating the ground outlined above. The Landlord cannot now rely on the submission that the Tenants knew the true purpose for ending the tenancy to avoid her obligations under section 51 of the *Act*.

I do note that it would usually be the purchaser who would be liable to compensate the Tenants in these circumstances given the grounds noted in the Notice. However, in this case the purchaser never asked the Landlord in writing to end the tenancy because the purchaser or a close family member intended to occupy the rental unit. Here, it is not the purchaser that is at fault for failing to follow through with the stated purpose of the Notice. It is the Landlord who is at fault for serving a notice to end tenancy based on a ground that did not apply and could not be fulfilled.

I find the Tenants are entitled to \$3,700.00 compensation under section 51 of the *Act*.

As the Tenants were successful in this application, I find they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$3,800.00 compensation and I grant the Tenants a Monetary Order in this amount.

### Conclusion

The Application is granted.

The Tenants are entitled to \$3,700.00 compensation under section 51 of the *Act*. The Tenants are entitled to reimbursement for the \$100.00 filing fee.

The Tenants are entitled to \$3,800.00 compensation and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 30, 2018

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Residential Tenancy Branch