



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the “Act”) for the following:

- a monetary order in an amount equivalent to double the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- reimbursement of the filing fee under section 72.

The hearing was conducted via teleconference and was attended by tenants HSJ and SYA who appeared on behalf of the tenants (the “tenants”).

The tenants testified they served the landlord with the Notice of Hearing and Application for Dispute Resolution on March 18, 2018 by registered mail. The tenants provided the Canada Post Tracking Number in support of service. I find the landlord was served on March 23, 2018, the 5<sup>th</sup> day after mailing, pursuant to sections 89 and 90.

The tenants were given a full opportunity to provide affirmed testimony, call witnesses and submit documentary evidence.

The landlord did not attend the hearing although I left the teleconference line open for an additional twenty minutes after the scheduled time. I confirmed the correct participant codes were provided to the landlord. Only the tenants and I participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the following:

- a monetary order in an amount equivalent to double the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- reimbursement of the filing fee under section 72.

Background and Evidence

The tenants provided affirmed testimony they entered into a month-to-month tenancy agreement to rent the unit on March 1, 2014 at a monthly rent of \$1,450.00 payable on the first of the month. The unit was sold to the landlord sometime during September 2017 and the tenancy agreement continued.

At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$700.00 which was returned to them when they vacated the unit on November 30, 2017.

The tenants testified they were personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") on September 27, 2017. The Two Month Notice gave the following reason for issuance:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser had 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 Two Month Notice contained a vacancy date of November 30, 2017. A copy of the Two Month Notice was submitted as evidence.

The tenants moved to another rental unit close to the unit on November 30, 2017. They testified they drove by the unit each day thereafter.

The tenants stated they became suspicious in December 2017 that the landlord did not intend to sell the property. They did not observe any indication the property was for sale, such as for sale signs.

On January 10, 2018, they conducted a web search and located an advertisement for the unit, a copy of which was submitted in evidence. The ad suggests the unit had been previously advertised for rent and was no longer available.

The ad states as follows:

*No Longer Available – White Rock 3 Bedroom Suite for R \$2,300.00.*

*Available now a beautiful 3 bedrooms and 2 washroom house in an amazing city of [city]. A perfect location for luxuries living. Location is walk-able to*

*[remainder of ad is not visible]*

*[as written]*

Accompanying the ad is a photograph of a living room. The tenants testified the living room was the one in the unit. They stated they knew this from its appearance as well as two small white wall repairs they did to nail holes situated to the left of the fireplace.

The tenants testified they observed the unit was vacant in December 2017. The tenants stated that commencing January 1, 2018, they observed the unit was occupied by workers for a company, the corporate name of which was displayed on the vehicles parked outside the unit. The tenants testified that on two occasions in January 2018 they attended at the unit to collect their mail. They observed the unit was occupied by new tenants.

The tenants testified the unit has been occupied by the same tenants ever since.

### Analysis

This application involves consideration of the applicable sections of the Act dealing with the termination of tenancy by the landlord for the landlord's use of the property.

The relevant sections of the Act are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice in September 2017. Recent legislative changes that took effect on May 17, 2018 to these sections of the Act, are not retroactive.

Section 51(2) of the *Act* states that, if 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 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.

The tenants applied for a monetary award of \$2,900.00 being the equivalent of two months' rent (\$1,450.00 x 2 = \$2,900.00) after having vacated the unit following the issuance of the Two Month Notice based on the stated landlord's use of property.

Based on the tenants' uncontradicted testimony and evidence, I find on a balance of probabilities that steps were not taken to accomplish the stated purpose as indicated on the Two Month Notice within a reasonable period after the effective date of the Notice.

I accordingly find the tenants are entitled to a monetary award under section 51(2) of the *Act*, equivalent to double the monthly rent, being \$2,900.00.

I find the tenants are successful in their application and are entitled to reimbursement of the filing fee.

I therefore grant the tenants a monetary award in the amount of **\$3,000.00** calculated as follows:

ITEM	AMOUNT
Section 51(2) one month rent	\$1,450.00
Section 51(2) one month rent- doubling	\$1,450.00
Reimbursement of filing fee	\$100.00
<b>TOTAL</b>	<b>\$3,000.00</b>

Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$3,000.00** against the landlord. The tenants are provided with a monetary 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: October 12, 2018

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Residential Tenancy Branch