



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Agent”) and the Tenant were present for the duration of the teleconference hearing. The Agent confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence by registered mail.

The Tenant stated that she received a copy of the Landlord’s evidence through email, which was confirmed by the Agent. The parties were informed that email is not a method of service under the *Act*. However, the hearing continued as the Tenant confirmed that she had reviewed the Landlord’s evidence and would like to proceed with the scheduled hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter

The Agent clarified during the hearing that the Landlord had been named incorrectly as a company name. The correct name of the Landlord was confirmed with both parties and the Application for Dispute Resolution was therefore amended to reflect the

correctly named parties. This amended was made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 15, 2016 and the Tenant moved out on December 17, 2017. Monthly rent was \$1,800.00 and a security deposit of \$900.00 was paid at the outset of the tenancy.

The Tenant provided testimony that on or around October 22, 2017 she notified the Agent that the dryer in the home had broken. The owner attended the home to look at the dryer. Then on October 31, 2017, the Tenant received a text message from the Agent stating that if the yard was not cleaned up, they would be evicted. The text message was submitted into evidence.

On October 31, 2017, the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The notice states that it was served in person to the Tenant, but both parties confirmed that it was posted on the door on October 31, 2017, the same date that the Tenant received it.

The Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date of the Two Month Notice was stated as December 31, 2017. The Tenant chose to vacate early and moved out on December 17, 2017. The Tenant confirmed that she received one month of rent compensation in accordance with Section 51(1) of the *Act*.

The Tenant testified as to her belief that the home is not being used for the stated purpose of the Two Month Notice and therefore she has applied for two months of rent compensation pursuant to Section 51(2) of the *Act*.

The Tenant provided further testimony that she drives by the home often and is aware that the home has remained empty since moving out. She also provided a letter from a witness stating that the home is empty as of September 6, 2018 and an email from another witness, dated September 7, 2018, stating that the home has been vacant since December 2017.

As the Agent submitted information regarding restoration occurring in the home, the Tenant also questioned why no one has moved into the home if the repairs were completed in September 2018.

The Agent provided testimony that the Two Month Notice was served to the Tenant on October 31, 2017 due to plans for the owner's parent to move into the home. The owner's parent was moving from another country and had plans to move in for January 2018.

However, the Agent stated that in January 2018, the owner noticed a smell in the home and discovered that the basement had flooded, with mould spreading throughout the home.

The owner made plans to begin restorations in the home, but was delayed due to the time it took to receive information from the insurance company. The Agent submitted into evidence an estimate from a home restoration company, outlining the work being completed in the home and stating restoration due to water damage.

The document included a claim number and policy number, and noted that the date the water damage occurred was January 1, 2018. A letter from the owner to the Agent states that the restoration was expected to be completed by the end of September 2018.

The Agent testified that although the restoration is now complete, the owner's parent has since found a new place to live and does not want to move again. The Agent was in agreement that the home has remained empty since the Tenant moved out, due to the issues in the basement that required significant restoration services. The Agent testified that the owner was not sure what would happen with the home now that restoration is complete.

### Analysis

I refer to Section 49(3) of the *Act* which states the following:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I accept the evidence and testimony of both parties that the Two Month Notice was issued on October 31, 2017 and accepted by the Tenant, with the tenancy ending on December 17, 2017.

Section 51(2) of the *Act* states that if steps are not taken within a reasonable period towards the stated reason of the Two Month Notice, a tenant may be entitled to two months of rent compensation. I also note that Section 51 of the *Act* changed in 2018 and Section 51(2) now provides for 12 months of rent compensation.

However, as the Two Month Notice in question is dated October 31, 2017, the legislation at that time applies, with a provision for compensation in the amount of two months of rent.

*Residential Tenancy Guideline 50: Compensation for Ending a Tenancy* outlines that a landlord must take steps towards using the rental unit for the stated purpose of the Two Month Notice, or use the unit for that purpose for at least six months.

However, as the Tenant is questioning whether the stated purpose of the Two Month Notice was undertaken due to the home remaining empty, I find that the definition of 'occupy' is relevant for this decision.

*Black's Law Dictionary* provides the following definition for occupy: 'To hold in possession; to hold or keep for use.'

The Tenant's claims were based on the home remaining empty since she moved out. Although it seems that the original plans of the Landlord for a family member to reside in the rental unit was not able to occur, I still find that the stated purpose of the notice was entered in to, with the Landlord continuing to 'occupy', or maintain possession of the home for their own use.

I also accept the evidence before me that the Landlord has not rented out the home to another tenant, but instead that the home has remained empty for more than six months. Restoration has occurred to make the home in a condition so as to be used by the Landlord or family member of the Landlord.

I find that the evidence submitted by the Landlord confirms that water damage occurred in the home and restoration was needed as a result. I do not find evidence to establish that the Landlord's intentions were to renovate and re-rent the home. I find that the vacant home remains in possession of the Landlord and intended for their use only and therefore steps were taken towards the purpose stated on the Two Month Notice.

I also accept that the Landlord's intentions were not to have the home vacant to renovate the home and instead that restoration was required due to water damage in the home.

I do not find any evidence to prove that the Landlord's intentions for completing restoration in the home were anything other than to occupy the home for their own use, or that of a close family member.

Therefore, based on the above analysis, I find that Section 51(2) of the *Act* does not apply, and I decline to award compensation to the Tenant. As the Tenant was not successful in her Application, I also decline to award the recovery of the filing fee, pursuant to Section 72 of the *Act*.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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 22, 2018

---

Residential Tenancy Branch