



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution of April 18, 2018 and evidence. The landlord testified that they have not submitted any evidence of their own. Based on the undisputed testimonies I find that the landlord was served with the tenant's hearing package in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for their application?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in April, 2015. The monthly rent at the end of the tenancy was \$925.00 payable by the first of each month. The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated November 30, 2018 on January 31, 2018. The 2 Month Notice indicates the reason for the tenancy to end is that the landlord or the landlord's close family member will occupy the rental unit.

The tenant seeks a monetary award of \$5,182.44 which consists of moving costs, the cost of their new tenancy and double the amount of rent pursuant to section 51(2) of the Act. The tenant testified that she believes that since moving out the landlord has failed to occupy the suite as indicated. The tenant testified that she has remained in contact with the other residents of the rental building and has been told that the occupant of the suite is not the landlord but a commercial tenant who is being charged a higher monthly rent.

The landlord disputes the tenant's submissions and testified that they reside in the rental unit.

### Analysis

Section 51(2) of the *Act* states 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 2 Month Notice indicates the reason for the tenancy to end is that the landlord or a close family member of the landlord intends to occupy the rental unit. The tenant believes that the landlord has not accomplished this stated purpose.

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities. In the present application the tenant must show that the landlord has not occupied the rental unit as they indicated they would on the 2 Month Notice.

I find that there is insufficient evidence in support of the tenant's claim. The tenant submits that she believes that the landlord has rented out the suite. The tenant has not provided documentary evidence in support of their submission. While the tenant submits that other residents of the building have informed her of the occupancy no witnesses were called and no sworn statements submitted into evidence. As the applicant the onus is on the tenant to provide evidence in support of their claim and to prepare the evidence in time for the hearing. The tenant's evidence consists of her own testimony and hearsay evidence. I find that this is insufficient to show on a balance of probabilities that the landlord is not occupying the rental suite. Consequently, I dismiss the tenant's application.

#### Conclusion

The tenant's application 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 26, 2018

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Residential Tenancy Branch