



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FFT

### Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The tenant attended and was given a full opportunity to be heard, present sworn testimony, to make submissions and to call witnesses.

The tenant said they had served their application for dispute resolution dated February 19, 2018 and their evidence on the landlord by registered mail. The tenant submitted a Canada Post tracking number showing mail sent on February 23, 2018 as evidence of service. I find that the landlord was deemed served with the hearing package on February 28, 2018, five days after mailing, in accordance with sections 88, 89 and 90 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 this application?

### Background and Evidence

The tenant provided undisputed evidence as the landlord did not attend. The tenant said that this periodic tenancy began in 2009 and ended in February, 2016 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use. The monthly rent was \$1,475.00 payable on the first of each month.

A copy of a 2 Month Notice was submitted into evidence. The 2 Month Notice is dated December 2, 2015 and states that the reason for the tenancy to end is that, "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".

The tenant submits that the landlord did not accomplish the stated purposes. The tenant submitted into evidence a letter from the landlord dated February 5, 2016 which was drafted in support of an earlier dispute resolution hearing where the tenant was disputing a Notice to End Tenancy. In addition the tenant submitted a screenshot showing the rental unit being advertised as available for July, 2018.

### 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 tenant seeks a monetary award in the amount of \$30,000.00 a figure that is wholly out of proportion with what the *Act* permits or what is reasonable.

As outlined in the Residential Tenancy Rules of Procedure 6.6, the onus is on an applicant to prove their claim on a balance of probabilities. I find there is insufficient evidence in support of the tenant's claim. While I accept that the tenant was issued a 2 Month Notice I find there is insufficient evidence that the landlord did not accomplish the stated purpose, specifically that the landlord did not make repairs that required the unit to be vacant. The tenant testified that they have no information as to the scope of repairs performed by the landlord. The tenant made some reference to information they heard from third parties but failed to present them as witnesses or submit signed statements from them.

I find that a single online advertisement showing the rental unit as available in 2018 is insufficient to conclude that the landlord did not perform repairs as stated on the 2 Month Notice in 2016. I find the tenant's evidence to be insubstantial and unpersuasive. I find that there is little documentary evidence in support of the tenant's submissions and their testimony to be vague, rambling and lacking an air of veracity. I find that the tenant has failed to present sufficient evidence to demonstrate that the landlord did not accomplish the stated purpose on the 2 Month Notice.

For these reasons the tenant's application is dismissed.

### Conclusion

The tenant's application is dismissed in its entirety 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: September 18, 2018

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Residential Tenancy Branch