



# 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 for Dispute Resolution under the *Residential Tenancy Act* (the Act). The Tenant applied for a monetary order for damage or compensation under the Act and for the return of their filing fee.

The Landlord and Tenant both appeared as did an advocate with knowledge of the tenancy for the Tenant. All parties agreed that the Notice of Hearing and evidence had been served appropriately by the Tenant and that the Landlord did not submit any evidence ahead of the hearing. I find that the Landlord was duly served with the Notice of Hearing documents in accordance with sections 88 and 89 of the Act.

The Tenants and Landlord were affirmed to be truthful in their testimony and were provided the opportunity to present their testimony and evidence.

I have reviewed all oral, written and documentary evidence before me that met the Rules of Procedure. Only the evidence relevant to the issues and finding in this matter are addressed in this Decision.

### Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation pursuant to section 51 of the Act?
- Is the Tenant entitled to recover the filing fee for his application?

### Background and Evidence

The Tenant testified that the tenancy began in December of 2011 and ended December 1, 2017 though he actually vacated the unit November 15, 2017. Rent was \$1937.00 due the 1<sup>st</sup> day of each month. The Landlord confirmed that these details are accurate.

All parties agreed that the Landlord served the Tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in person on October 24, 2017 with an effective date of January 31, 2018. The Tenant testified that he then found another place to rent and ended the tenancy December 1, 2017.

The Tenant testified that he subsequently was alerted to the unit being advertised for rent and looked into the matter as the reason given on the Notice for the end of tenancy was checked as follows:

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 Tenant testified that in conversations with the Landlord he had expressed that his parents were to move into the unit after the Tenant vacated. The Tenant then looked into the Act and felt that the Landlord had not used the unit for the stated purpose on the Notice and is requesting 2 months compensation in accordance with section 51 of the Act. The Tenant entered into evidence a title change showing a new owner of the residential property dated January 24, 2018.

The Landlord testified that his parents did intend to move into the unit and that while his father was doing some work in the yard of the unit he was approached by a neighbour who offered to buy it. The Landlord confirmed that the house was sold in January of 2018 and that the title change entered into evidence was accurate. The Landlord argued that the Notice was given in good faith and a change of circumstances resulted in the sale of the house.

### Analysis

I have carefully reviewed the testimony and evidence provided by the parties in this dispute and, based on undisputed testimony and a balance of probabilities, I find as follows:

This is an application pursuant to section 51 of the Act. This section of the Act was amended on May 17, 2018 and, therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

As this Notice was issued on October 24, 2017 and royal assent for the amended legislation was received on May 17, 2018 stating that the amendments apply to all notices issued as of the date of royal assent and onwards, I find that the Notice was issued prior to the date of royal assent and therefore falls under the form and content of the old legislation.

Section 51 of the old legislation stated:

**Tenant's compensation: section 49 notice**

- 51** (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.

I accept the testimony of the Landlord that his parents did not move into the rental property as planned and that the house was sold in January 2018. While I also accept that the Landlord's parents intended in good faith to move into the property when the Notice was issued, they did not move in and the house was sold within three months of the Notice being issued. I find the Landlord did not follow through with the reason for the end of tenancy stated on the Notice and therefore is in breach of section 51 of the Act.

Pursuant to section 51 of the Act, I find that the Tenant has successfully proven he is entitled to compensation for the Landlord's breach of the Act. Therefore, I grant the Tenant a monetary order in the amount of \$3874.00 which is double the monthly rent of \$1937.00 payable under the tenancy agreement.

I acknowledge the testimony of the Landlord that the Notice was issued in good faith but note that Notices issued pursuant to section 49 of the Act before May 17, 2018 have no provision to allow an arbitrator discretion for extenuating circumstances when rendering a decision pursuant to section 51 of the Act.

As the Tenant is successful in his application, I award the recovery of the filing fee paid for the Application of Dispute Resolution in the amount of \$100.00 to the Tenant, pursuant to section 72 of the Act.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of \$3974.00 for compensation under the Act and recovery of the filing fee for this application. Should the Landlord fail to comply with this Order it 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: September 07, 2018

---

Residential Tenancy Branch