



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 21, 2018 (the “Application”). The Tenants sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

The Tenants sought \$2,101.00 as follows:

1. \$43.54 for loss of parking space;
2. \$97.48 for loss of laundry;
3. \$1,860.00 for eviction in bad faith (two months rent); and
4. \$100.00 for reimbursement for the filing fee.

I addressed the request for \$1,860.00 pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) first. This took up the hearing time. I dismissed the Tenants’ application for \$43.54 for loss of parking space and \$97.48 for loss of laundry with leave to re-apply. This does not extend any time limits set out in the *Act*. I note that these claims are not related to the main issue before me, compensation under section 51 of the *Act*, as required by rule 2.3 of the Rules of Procedure.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to compensation under section 51 of the *Act*?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started February 1, 2016 and was a month-to-month tenancy. Both parties agreed rent was \$930.00 at the end of the tenancy.

Both parties agreed the Tenants moved out of the rental unit March 31, 2018.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") was submitted as evidence. Both parties agreed this is the Notice that was served on the Tenants. It is dated February 5, 2018. The effective date was April 5, 2018. The grounds for the Notice are that "the rental unit will be occupied by the landlord or the landlord's close family member". The parties agreed the Notice was served on the Tenants around February 5, 2018.

Tenant 1 testified as follows. The Tenants moved into the rental unit in February of 2016. There were no issues for most of the tenancy. The Landlords did not write letters of complaint to them during the tenancy. Things deteriorated starting January of 2018. The Tenants believe the Landlords wanted them to move out so that they could re-rent the unit for a higher amount. The Notice was served in February. In March, the rental unit was posted for rent at a higher amount.

Tenant 1 further testified as follows. Someone the Tenants knew sent the Landlords a text about the ad for the rental unit asking if the unit was available for March. The Landlords replied that it was. She also sent an email to the Landlords asking if the rental unit was available.

The Landlord testified as follows. His father-in-law needed a place to live and his wife thought it would be a good idea for him to live with them. The Landlords therefore gave the Tenants the Notice. The Landlords listed the unit for rent to see what rent amount they should be charging their father.

The Landlord further testified as follows. After the Tenants vacated the rental unit, and after the move-out inspection, the Landlords discovered the unit smelled of smoke and cat urine. The Landlords had to replace the floor and re-paint because of the smell. The floors were replaced two days after the Tenants vacated the rental unit. The unit was re-painted nine days after the Tenants vacated the rental unit. The unit was ready for occupancy April 10, 2018; however, his father-in-law had changed his mind about moving into the rental unit as the nine-day delay had been too long for him to wait.

The Landlord said he did not know if the Tenants smoked in the rental unit or if they had a pet in the rental unit. The Landlord testified that it is the fault of the Tenants that his father-in-law did not move into the rental unit because they left it with a smell that required the floors to be replaced and the walls re-painted.

Tenant 1 denied that there was any odour of smoke or cat urine in the rental unit upon move-out. She denied that the Tenants smoked in the rental unit. She denied that the Tenants had a pet in the rental unit. She confirmed that the Landlords lived upstairs from the Tenants. She noted that the Landlords never mentioned a smell during the tenancy.

Tenant 2 pointed out that the invoice from the cleaning company for the Landlords is from a party planning company. The Tenants pointed out that the Landlords never filed an Application for Dispute Resolution in relation to the alleged smell in the rental unit that required new flooring and re-painting.

I asked the Landlord why the cleaning invoice is from a party planning company. He said this company was recommended to them because they do party clean-up. I asked how this company was qualified to state that the flooring needed to be replaced and the Landlord said he was not sure. The Landlord confirmed the Landlords did not file an Application for Dispute Resolution in relation to the alleged smell in the rental unit that required new flooring and re-painting. He acknowledged having the forwarding address of Tenant 2.

The Landlord said he believes the rental unit was re-rented for June 15, 2018.

The Tenants submitted letters from witnesses confirming the rental unit did not smell upon them vacating.

The Tenants submitted emails from the Landlords about re-renting the unit.

The Tenants submitted the Condition Inspection Report showing no damage or smell was noted on this.

The Tenants submitted the ads for the rental unit posted February 22, 2018 and still posted in March.

The Tenants submitted texts between their friend and the Landlords about the rental unit being available for April 15, 2018.

The Landlords submitted Affidavits which outline what was outlined by the Landlord during the hearing.

The Landlords submitted a letter from a witness about posting the rental unit for rent to see what the market value of it was in order to determine a fair price for their father. The letter also mentions the smell in the rental unit. It also refers to the father-in-law changing his mind because of the delay in the rental unit being ready once the Tenants vacated.

The Landlords submitted the cleaning invoice. As mentioned, it is from a party planning company. It refers to smoke smell and cat urine in the rental unit. It states that the recommendation is to replace the flooring.

### Analysis

The Notice was served on the Tenants in February and therefore the legislation in force at that time applies to this matter.

Section 49 of the *Act* allowed a landlord to end a tenancy for landlord's use of property in the specific circumstances outlined in the section.

The Notice was issued under section 49(3) of the *Act* which stated:

(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.

Section 51 of the *Act* set out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act* and stated:

(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 do not accept the submissions or evidence of the Landlords in this matter. Neither the submissions nor the evidence accord with common sense or human experience.

However, it is not necessary for me to detail why the Landlords' submissions and evidence are neither reliable nor credible as the Landlords acknowledge that their father did not move into the rental unit at any point. The Landlords did not submit that any other family member moved into the rental unit at any point. The Landlord acknowledged re-renting the rental unit around June 15, 2018, within six months of the effective date of the Notice.

Based on the Landlords' own evidence, I find the Landlords failed to use the rental unit for the purpose stated in the Notice for at least six months beginning within a reasonable period after the effective date of the Notice. The Landlords therefore must pay the Tenants the equivalent of double the monthly rent payable under the tenancy agreement.

I note that the reasons for the Landlords' father not moving into the rental unit are not relevant on this application. The legislation in force at the time the Notice was issued did not allow landlords to escape liability under section 51 of the *Act* based on

extenuating circumstances. The Landlords were required to use the rental unit for the purpose stated in the Notice within a reasonable time and for at least six months.

I note that, even if the reasons for the Landlords' father not moving into the rental unit were relevant, I would not have accepted that the rental unit smelled of smoke or cat urine given the evidence submitted on this point.

I award the Tenants compensation in the amount of \$1,860.00 pursuant to section 51 of the *Act*.

As the Tenants were successful in this application, I find they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$1,960.00 compensation and I grant the Tenants a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$1,960.00 compensation and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 05, 2018

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Residential Tenancy Branch