



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FFT

### Introduction

On March 31, 2018, The Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant requested that the dispute address be corrected on the Tenants Application. The Application is amended accordingly.

### Issues to be Decided

- Is the Tenant entitled to other compensation under the Act or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on November 1, 2014. Rent in the amount of \$1,100.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$550.00. The parties testified that the tenancy ended on November 3, 2016.

The Tenant testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 30, 2016 ("the 2 Month Notice"). The reason for ending the tenancy within the 2 Month Notice is:

*The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.*

The Tenant accepted the 2 Month Notice and moved out of the rental unit on November 3, 2016.

### Compensation for Breach of Act

The Tenant testified that the Landlord did not use the rental unit for the purpose stated within the 2 Month Notice.

The Tenant testified that a friend of hers went to the rental unit looking for her and found that the rental unit was occupied by persons who indicated they moved into the rental unit on February 1, 2017, and they indicated they were not related to the Landlord.

The Tenant produced a witness, Ms. I.I. who provided affirmed testimony that in January 2018, she knocked on the door of the rental unit and spoke to the occupants. She testified that the Tenants told her they moved into the unit on February 1, 2017, and are not related to the Landlord. Ms. I.I. testified that she then informed the Tenant of what she had heard.

The Tenant is seeking compensation for her moving costs, mail costs, carpet cleaning costs and the difference in monthly rent for 6 months.

In reply, the Landlord testified that he does not believe that the Tenant's friend met his Tenant because the Tenant's witness described the new Tenant as having blonde hair and his Tenant is African American.

The Landlord initially testified that he re-rented the unit to a new tenant in April 2017. The Landlord then corrected his testimony saying that he rented the unit to new Tenants beginning May 1, 2017.

The Landlord testified that after the Tenant moved out he completed some repairs of the unit and intended for his daughter to move into the rental unit.

The Landlord testified that he did not rent the unit out within 6 months of the Tenant moving out of the rental unit. The Landlord submitted that the tenancy should be considered to end on October 31, 2018, and not November 3, 2018 when the Tenant moved out.

The Tenant testified that she returned the keys to the rental unit to the Landlord on November 3, 2018, at the time of the move out inspection. The Tenant testified that she received compensation of one month's rent from the Landlord.

The Landlord testified that he could not provide a copy of the tenancy agreement with the new tenants because it has not been prepared in writing.

### Analysis

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the Landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (2) of the Act states:

*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.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find the Landlord failed to use or occupy the rental property for the stated purpose for at least six months beginning within a reasonable period after the effective date *of the* Notice.

The Landlord's testimony lacked certainty because he initially testified the new tenancy began in April 2017, and later changed it to May 1, 2017. Regardless of this, the legislation states that if the rental unit is not used for the stated purpose for **at least 6 months** the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the tenancy ended when the Tenant vacated the rental unit and returned the keys on November 3, 2018. I find the Landlord re-rented the unit within six months of the tenancy ending.

I find that pursuant to section 51(2) of the Act, the Landlords must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement. I find that the Landlord owes the Tenant \$2,200.00.

The Act does not specifically permit additional compensation to be awarded when a Landlord breaches the Act by failing to use a rental unit for a stated purpose. The Act specifically allows compensation of double the monthly rent payable under the tenancy agreement if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

Since I have already awarded the Tenant compensation of double the monthly rent payable under the tenancy agreement for the Landlords' breach of the Act, the Tenant's request for compensation for her moving costs; mail costs; carpet cleaning costs; and the difference in monthly rent for 6 months is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$2,300.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to use the rental unit for the stated purpose within the 2 Month Notice for a 6 month period. The Landlords must pay the Tenant the amount of two months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$2,300.00.

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: November 7, 2018

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Residential Tenancy Branch