



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This decision is in respect of the tenants' application for dispute resolution made under the *Residential Tenancy Act* (the "Act") and filed on July 10, 2018. The tenants seek compensation under sections 7, 67, and 72(1) of the Act, for, as stated in the particulars of their application: "\$200 filing fees \$1510.75 unnecessary moving expenses \$3800.00 penalty for violating tenancy act".

A dispute resolution hearing was convened on December 13, 2018, and one of the tenants and the landlord attended. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue of this application is considered in my decision.

### Issue to be Decided

Are the tenants entitled to compensation pursuant to sections 67 and 72(1) of the Act?

### Background and Evidence

After discussing with the tenant about the aspect of her claim regarding the \$3,800.00 "penalty" for the landlord's alleged violation of the Act, she explained that it was compensation sought under section 51 of the Act for the landlord's failure to use the property as described in a notice to end tenancy.

The tenant testified that the tenancy commenced on October 16, 2016 and ended on October 30, 2017. On September 21, 2017, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice"), with an effective end of tenancy date of November 30, 2017. Page 2 of the Notice indicates the ground for the Notice being issued is that 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)."

A copy of the Notice was submitted into evidence. The tenant confirmed with me that they did not dispute the Notice at the time that it was issued.

The tenant wanted to know why the Notice was issued, the purpose for it being issued, and wondered whether it was due to issues of pine needles not being removed from the property, or due to issues they had with a business across the street and some disruptive vehicular traffic.

The tenant testified that the rental unit was an unregistered suite, and that they were not informed of this at the time they rented the rental unit, and were not informed that the landlord smoked. She explained that the entire process of having to move out and find a new place was upsetting and stressful. She further submitted that no one rented the rental unit, that they were evicted for no reason, and that the landlord never rented it.

The landlord testified that he need to the place to live and that he was going to occupy the rental unit. He further testified that he occupied the rental unit on November 1, 2018 and has resided there ever since. The landlord explained that after the tenants reported the fact that it was an illegal rental unit to the municipality that he then needed to apply for rezoning permits to allow the rental unit to be legal.

In response to a question from the tenant, he stated that he has lived in the house (other than when tenants have been there) for about forty years.

There was some rebuttal by the tenant regarding correspondence between the city and the landlord and issues concerning whether the rental unit was an illegal suite and how long the landlord was occupying the rental unit. The landlord did not have any rebuttal or final submissions. At the very end of the hearing, the tenant wanted to ask the landlord whether he has a sister, to which I advised the tenant that I would not permit this question. For the purposes of this decision, I note that the reason I did not permit that question is that it is irrelevant to the issue before me.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenants claim that the landlord failed to comply with Act, specifically section 51(2), which reads as follows. (I note that this section was amended on May 17, 2018. The version cited below is the section as it appeared prior to May 17, 2018.)

(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.

The tenant argued, and submitted, that the landlord never rented the rental unit, that they were “kicked out for no reason,” and that there is no one renting the rental unit. The landlord testified that he moved into the rental unit shortly after the tenants moved out and has occupied the rental unit ever since. There is no evidence before me establishing that the landlord does not live in, and hence occupy, the rental unit.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the tenants have failed to provide any evidence that the landlord did not take steps to occupy the rental unit within a reasonable period after the effective date of the Notice, or any evidence that the landlord did not use the rental unit for the stated purpose for at least six months after a reasonable period had elapsed.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their case that the landlord failed to comply with the Act. As the first criteria of the test for compensation has not been proven, I need not consider the remaining three criteria.

Given the above, I dismiss the tenants’ application for compensation under section 51 of the Act, and accordingly dismiss their claim for compensation for moving expenses, which is related to the first claim. And, while I acknowledge and recognize that the tenants’ family quite likely experienced stress and upheaval from having to move and find a new home, this is not a compensable claim for the reasons explained.

As noted at the start of the hearing, I cannot consider the claim for compensation related to recovery of a filing fee in a previous decision from the Residential Tenancy Branch because this is excluded under the legal principle of *res judicata*. Insofar as the tenants’ claim for recovery of filing fee for the application before me, I dismiss that aspect of their claim.

### Conclusion

I hereby dismiss the tenants’ application 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 Act.

Dated: December 13, 2018

---

Residential Tenancy Branch