



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order in the amount of \$19,450.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit, and to recover the cost of the filing fee.

Tenant AS ("tenant") and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The parties confirmed being served with the documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. I consider both parties served as a result of the above.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant confirmed that she only stated to the landlord that her address was being "forwarded" and listed the rental unit as their forwarding address, which I advised the tenant was not sufficient to comply with section 38 of the *Act*. Therefore, the parties were advised that the tenants' application for the return of their security deposit was premature and that I find that the date of the hearing, December 14, 2018, is the date that the tenants have provided the landlord with their written forwarding address. For ease of reference, the tenants' written forwarding address has been included on the cover page of this decision for ease of reference. I

have made this decision in accordance with Residential Tenancy Branch Practice Directive 2015-01.

In addition, as the tenants provided an email address in their application, the tenants will be provided the decision and any related order by email. The landlord will be sent the decision by regular mail as an email address was not provided during the hearing.

### Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of double the monthly rent pursuant to section 51(2) of the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A fixed-term tenancy agreement began on May 1, 2017 and reverted to a month to month tenancy after April 30, 2018. The parties confirmed that monthly rent was \$1,500.00. There is also no dispute that the tenancy ended by way of the landlord serving the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2018, ("2 Month Notice"). The 2 Month Notice had an effective vacancy date of June 30, 2018 and the tenants vacated the rental unit on that date. This reason listed on the 2 Month Notice was:

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).

[Reproduced as written]

The tenants are seeking 12 months' compensation under the *Act* for the landlord failing to comply with the reason stated in the 2 Month Notice. The landlord testified that he sold the rental property as of September 15, 2018.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

Section 51(2) of the *Act* applies and states:

**(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.**

[My emphasis added]

As the landlord selling the rental property as of September 15, 2018, I find the landlord failed to use the rental unit for the stated purpose for at least six months as required by the *Act*. Therefore, I find the landlord breached the *Act* by selling the rental property and not waiting a minimum of six months from June 30, 2018, which was the end of tenancy date before selling the rental property. I note that the 12 month of compensation that the tenants' have claimed did not come into effect under the *Act* until May 17, 2018 by Royal Assent and as a result, the tenants are not entitled to 12 months' compensation and are only entitled to 2 months' compensation.

Therefore, I find the landlord owes the tenants **\$3,000.00**, which is double the \$1,500.00 monthly rent pursuant to section 51(2) of the *Act*.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The tenants have established a total monetary claim of **\$3,100.00** as described above. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$3,100.00** accordingly.

**I caution** the landlord not to use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

### Conclusion

The tenants' application is partly successful. The security deposit claim was premature, which has been addressed above.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenants have met the burden of proof and have established a total monetary claim of \$3,100.00. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,100.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 17, 2018

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Residential Tenancy Branch