



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

On August 17, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation under Section 51 of the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

### Issues to be Decided

Should the Tenants be compensated in accordance with Section 51 of the Act?  
Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenants agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on April 15, 2015 and was renewed as a one-year lease annually with a final date of April 30, 2018. The monthly rent was \$3,300.00 and the Landlord collected, and since returned, the \$1,650.00 security deposit. The

Landlord used the same Tenancy Agreement to renew the tenancy for the one-year fixed terms by writing the new dates and having the parties initial the agreement.

The Tenants testified that they were given a Two-Month Notice to End Tenancy for Landlord's Use of Property, dated April 1, 2018 (the "Notice"), that indicated the reasons for the end of tenancy where that the Landlord planned to move into the rental unit. The Notice had an effective date of June 30, 2018. The Tenants did not contest the Notice. The Tenants stated that as of August 17, 2018 the Landlord had not yet moved into the rental unit and are claiming double the monthly rent for a total of \$6,600.00 in compensation.

The Landlord's Representative ("Rep") testified that the Landlord has not moved into the rental unit yet. The Rep stated that after the Tenants vacated the rental unit, several weeks of renovation and repairs occurred to prepare the unit for the Landlord's use. The Rep stated that in August 2018, the Landlord's health began to deteriorate and on August 29, 2018, the Landlord attended the Urgent Care Centre for heart palpitations. Both the Landlord and his family were worried about allowing the Landlord to move into the rental unit on his own, regardless of the Landlord's intentions to live independently. The Rep stated that the Landlord has still been suffering from heart palpitations and has provided documentation of recent hospital and doctors visits.

The Landlord stated that the rental unit is empty and that he still hopes to move into the rental unit once his health improves.

### Analysis

Section 51 of the Act, (as of April 1, 2018 - the date the Notice was served) stated that if 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 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the Tenancy Agreement.

Residential Tenancy Policy Guideline 50 provides guidance regarding compensation for ending a tenancy. It states that an arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation.

The Tenants provided testimony and have established that the Landlord failed to move into the rental unit as stated on the Notice. However, I have to consider Policy Guideline 50 before finding that the Tenants are due compensation.

I accept the Landlord's evidence that his health condition has delayed his ability to move into the rental unit. As the rental unit has been empty for almost six months and the Landlord will have lost a total of \$19,800.00 in potential rental income, I find the Landlord's testimony more convincing and that his intentions were not in bad faith. I find that the Landlord has established that there have been extenuating circumstances, his poor health, that have stopped him from accomplishing his intention to move into the rental unit.

As such, I find that the Tenants should not be compensated for double the monthly rent, in the amount of \$6,600.00 and in accordance with Section 51 of the Act.

I dismiss the Tenants' Application without leave to reapply.

As the Tenants were unsuccessful with their Application, I do not award compensation for the cost of the filing fee, in accordance with Section 72 of the Act.

### Conclusion

The Tenants' Application is dismissed 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 *Residential Tenancy Act*.

Dated: December 20, 2018

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Residential Tenancy Branch