



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the “Act”) for the following:

- A monetary order in an amount equivalent to double the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenants and the landlord attended the hearing. Both had an opportunity to provide affirmed testimony, call witnesses and submit documentary evidence.

The landlord acknowledged receipt of the Application for Dispute Resolution and the Notice of Hearing. The tenants acknowledged receipt of the landlord’s materials. Neither party raised any issues of service. I find each party served the other pursuant to the requirements of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to the following:

- A monetary order in an amount equivalent to double the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, I do not reproduce all details of the submissions and arguments here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties agreed the tenants began renting the unit, a duplex, in February 2011. The landlord purchased the property in January 2018 and the tenancy continued. The tenants paid \$1,315.00 in rent at the first of the month. At the beginning of the tenancy, the tenants paid a security deposit to the landlord which the landlord returned to them when they vacated.

The parties agreed that the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) dated and served on February 15, 2018 with an effective date of May 31, 2018. The reason for the Two Month Notice indicated on the form is:

*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 the individual's spouse).*

On May 31, 2018, the tenants vacated the unit pursuant to the Two Month Notice.

The tenants testified that the landlord did not occupy the rental unit for the purpose stated on the Two Month Notice within a reasonable time after May 31, 2018 and accordingly, they were seeking two months' rent as compensation.

The tenants submitted a copy of an text from the realtor of the buyer (the landlord) dated September 27, 2017 in support of their claim that the landlord's motive in issuing the Two Month Notice was to raise the rent after they left the unit. The text stated that the new owner would like to keep the tenants. The text continued as follows:

The only contingency is he needs to increase the rent somewhat to satisfy the needs of the lender and his new mortgage. If you would like to stay on his [sic] tenants, he would be happy to keep you, but his lender is insisting on a monthly rent of \$1600 from December 1 [2017] to May 31 [2018] and then \$1800 per month thereafter. I realize this is a steep increase for you guys, so I just wanted to give you heads up and see what your thoughts were. Is this something you

would like to do, or would you prefer to find a rental someplace else effective December 1 [2017]?  
(as written)

After they moved out on May 31, 2018, the tenants testified they learned from neighbours that during August 2018 the landlord had advertised the unit for rent online and was showing the unit to prospective tenants. The tenants submitted undated screen shots of ads from an online website which stated that the unit was available immediately for \$1,600.00 a month on a 1-year lease. The tenants testified the date of the screenshots were during August 2018.

The landlord acknowledged she advertised the unit on an online site for rent during August 2018 on the terms set out in the ads. However, she stated she only posted the ads for a period of one week.

The tenants concluded the landlord issued the Two Month Notice for the sole purpose of updating the unit and renting it for more rent. Accordingly, the tenants filed this application for dispute resolution on September 9, 2018 and served the landlord that day. The landlord acknowledged service.

The landlord testified her son moved in to the unit in mid-September 2018. She stated that the delay in occupancy was due to several unforeseen factors. She testified as follows and submitted a timeline of events, which was supported by documentary evidence where indicated:

- The unit required repairs and cleaning when the tenants vacated, a situation which was not known to her before the end of the tenancy;
- The landlord acknowledged returning the security deposit to the tenants without any deduction for repairs; however, she denied closely inspecting the unit;
- The landlord's insurance company inspected the property on June 2, 2018 and submitted a report, a copy of which the landlord filed, listing deficiencies in the property which required repair, such as installation of smoke detectors; the report stated that the unit was vacant and "will be occupied by a family unit of two, a relative of the insured by mid June 2018";
- The landlord obtained quotes from June 3-15, 2018 for the deficiencies noted by the insurance company as well as painting the unit;
- The landlord was subsequently on holidays for several weeks which delayed renovations and painting of the unit;

- From July 10 to August 31, 2018, the landlord oversaw cleaning and repairs of the unit; the landlord submitted a copy of a carpet cleaning invoice dated August 10, 2018;
- The unit was not ready for occupancy by the landlord's son until the first week of September 2018 because of these events;
- In the meantime, the landlord's son became noncommittal about moving in to the unit after the tenants vacated;
- To help him make up his mind, the landlord advertised the unit at \$1,600.00 a month (an increase from the rent of \$1,315.00 paid by the tenants) for one week in August 2018; she was never serious about renting the unit and always expected her son would move in;
- The landlord denied showing the unit to prospective tenants but acknowledged she received an offer to rent the unit for \$1,600.00 at the end of August 2018, which she declined as her son intended to move in;
- Advertising the unit for rent had the effect desired by the landlord: her son made up his mind in early September 2018 to move in to the unit;
- In the meantime, the tenants served the landlord on September 9, 2018 with this application;
- The landlord's son started moving his personal possessions into the unit in early September 2018 and spent his first night there mid-September;
- The service of this application was coincidental with the subsequent occupancy by the son; the son would have moved in to the unit in any event;
- The landlord's son started to live in the unit in mid-September 2018;
- The landlord submitted a copy of an invoice for internet for the unit indicating service began in her son's name on September 18, 2018.

The tenants disagreed with much of the landlord's evidence. They stated they believed the landlord's intentions were to evict them, so she could renovate and raise the rent. The tenants testified that the parties had a meeting in mid-February 2018 during which the landlord requested a rent increase greater than the amount allowed under legislation. When the tenants refused, the landlord produced the signed Two Month Notice which she served upon them before the end of the meeting.

The tenants deny that the landlord was unaware of the condition of the unit until they vacated. They testified the landlord walked through the unit with them on the last day of the tenancy, stated she was satisfied with the condition of the unit, and immediately returned the security deposit. The tenants acknowledged the unit was older and in need of updating. However, they stated its condition was well known to the landlord and the

purpose of the insurance report and the repairs was to obtain a higher rent for the unit. The tenants speculated that the landlord quickly moved her son into the unit a week after they served her with this application.

### Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice. Recent legislative changes to these sections of the *Act* are not retroactive.

Section 49 of the *Act* stated, in part, as follows:

*49 (2) Subject to section 51 [...], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

*(a) not earlier than 2 months after the date the tenant receives the notice...*

Section 51 of the *Act* stated, in part, as follows:

*51 (1) 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.*

*...*

*(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]**

In this matter, there was no dispute that the unit was vacant for over three months after the tenants vacated, from the end of May 2018 to mid-September.

There is no dispute that the landlord advertised the unit for rent in August 2018. There *is* a dispute relating to the purpose of the advertising; the landlord testified there was never any intention to rent the unit. The tenants stated that an obvious inference from advertising the unit for rent is that the landlord intended to rent it.

The landlord claimed that her son was unable to occupy the rental unit for over three months due to required repairs and cleaning. Additionally, the landlord referenced personal issues with her son contributing to an uncertainty and delay in his moving in.

The onus is on the tenants to establish their claim. I find that the tenants have presented sufficient evidence to prove their claim. This finding is based on the undisputed facts that the unit was vacant for over three months, that the landlord's son began occupying the unit shortly after the tenants served this application, and the landlord acknowledged advertising the unit for rent. I also find, on a balance of the probabilities, that is, it is more likely than not, that the landlord did not use the rental unit for the purposes stated on the Two Month Notice within a reasonable period after the effective date of the notice, in contravention of section 51(2)(a) of the *Act*.

Accordingly, I find that the tenants are entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act*. The tenant's monthly rent payable under the tenancy agreement was \$1,315.00. Therefore, the monetary compensation is equivalent to double the monthly rent, being a monetary award of \$2,630.00.

As the tenants were successful in their application, I find that they are entitled to recover the cost of the filing fee in the amount of \$100.00.

I therefore grant the tenants a monetary award in the amount of **\$2,730.00** calculated as follows:

ITEM	AMOUNT
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Section 51(2) one month rent	\$1,315.00
Section 51(2) one month rent- doubling	\$1,315.00
Reimbursement of filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,730.00</b>

### Conclusion

I grant a monetary order in favour of the tenants in the amount of **\$2,730.00** being the equivalent of double the monthly rent payable under the tenancy agreement, and recovery of the \$100.00 filing fee.

The tenants are provided with a monetary order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 09, 2019

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Residential Tenancy Branch