



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNRT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for compensation for emergency repairs and for the recovery of the filing fee paid for this application.

One of the Tenants was present for the duration of the teleconference hearing, as was legal counsel for the Landlord and two family members of the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenant confirmed receipt of the Landlord’s evidence package. As neither party brought up any issues regarding service, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Are the Tenants entitled to monetary compensation?

Are the Tenants entitled to compensation for emergency repairs?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2017 and ended on July 27, 2018. Monthly rent was \$2,500.00 and a security deposit of \$1,250 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The initial tenancy agreement was signed for a fixed term of one year, set to end of July 31, 2018.

The Tenant provided testimony that in early May 2018, they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). He stated that he was advised that the owners of the property would be moving into the home. The Two Month Notice, dated April 28, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- 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)

The effective end of tenancy date was stated as July 31, 2018. The Tenant confirmed that they received one month of rent compensation pursuant to Section 51(1) of the Act.

The Tenant stated that on August 4, 2018 he noticed the upper level of the home advertised for rent online. A screenshot of the advertisement was submitted into evidence showing that the rental unit was advertised for \$2,200.00 per month. The Tenant stated that on August 15, 2018, he noticed a second advertisement online, this time for rental of the whole home in the amount of \$3,600.00. The Tenant also submitted a screenshot of this advertisement into evidence. The Tenant confirmed that they resided in the entire home during their tenancy.

The Tenant stated that he had family members arrange for a viewing of the home based on the online advertisement. His family members were able to confirm to him that it was the same house that the Tenants had resided in.

The Landlord confirmed that the photos submitted by the Tenant were photos of the rental property and that the home was advertised for rent in August 2018. They stated

that the Two Month Notice was issued in good faith as the property owner was planning to move into the home. However, they testified that due to extenuating circumstances, the owner was unable to do so which is why the home was advertised for rent in August 2018.

The Landlord stated that the home owner was moving from another country and as her initial travel visa expired, she applied again. While waiting for the visa approval, the owner was diagnosed with knee issues which changed her plans to move into the home. The Landlord submitted that the owner's new visa was received after the diagnosis and therefore no tickets were bought to come to Canada and move into the home.

The Landlord submitted into evidence a medical report dated July 25, 2018 stating that the owner was diagnosed with bursitis in one knee and it was recommended that she not travel. The Landlord also submitted a copy of the owner's travel visa issued July 31, 2018. A letter dated December 28, 2018 was included in the Landlord's evidence package. The letter, from a family member of the owner, states that the owner intended to move into the home until diagnosed with knee issues that made it difficult to walk or travel.

The Tenants also applied for the recovery of moving costs in the amount of \$2,352.00. They stated that they were unable to find a new rental unit with enough space for their belongings, so had to give away some pianos that they had in the home. The Tenant stated that they had three invoices from the movers due to separate times they attended the home; once to move the Tenants' belongings and twice to move pianos.

The Tenants submitted the invoices from the moving company into evidence. The first invoice, dated June 5, 2018 for the amount of \$378.00, an invoice dated June 28, 2018 in the amount of \$262.50, and an invoice dated July 25, 2018 in the amount of \$1,344.00. The Tenant noted how stressful it was moving, along with losing some business due to the move.

The Landlord questioned why the Tenant was working from home when this was not allowed in the tenancy agreement. The Landlord also stated that this was a one-year fixed term tenancy, so the Tenants should have expected to have moving expenses at some point. The Landlord stated that they should not be responsible for the moving costs of the Tenants.

The Tenants also applied for the cost of repairing a toilet during the tenancy in the amount of \$399.00. The Tenants submitted an invoice from a plumbing company dated January 23, 2018 and showing a charge of \$399.00.

During the hearing, the Landlord agreed that they would reimburse the Tenants for the plumbing costs in the amount of \$399.00.

### Analysis

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

The parties were in agreement that the tenancy ended due to a Two Month Notice pursuant to Section 49(3) of the *Act*. The Landlord stated that the notice was issued in good faith with plans for the home owner to move into the home.

The parties were also in agreement that the Landlord or a close family member of the Landlord did not move into the home and therefore the Landlord did not follow through with the intended purpose of the Two Month Notice.

I note that Section 51 of the current legislation provides for 12 months of rent compensation should steps not be taken to follow through on the stated purpose of the Two Month Notice. However, the legislation changed on May 17, 2018 and the Tenant stated that they received the Two Month Notice, dated April 28, 2018, in early May 2018. As such, I find that the previous legislation applies to this matter.

Section 51(2) of the *Act*, at the time the notice was served to the Tenants, states the following:

- (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.

Although the Landlord claimed extenuating circumstances as to why the owner was not able to move into the rental property, I note that extenuating circumstances was an amendment to Section 51 of the *Act* which took effect on May 17, 2018. Therefore, regardless of why the Landlord did not use the property for their own use or that of a close family member, I find that they did not occupy the home as stated as the reason for ending the tenancy on the Two Month Notice. Accordingly, I find that the Tenants are entitled to compensation in the amount of \$5,000.00, pursuant to Section 51(2) of the *Act*.

As for the moving costs claimed by the Tenants, I do not find that this is an amount owed to the Tenants. Instead, I find that moving costs are costs that are incurred regardless of when a tenancy ends and that the moving costs are not connected to whether or not the Landlord occupied the home.

Instead, I find that Section 51 of the *Act* provides compensation for the inconvenience of moving and further compensation should the intended purpose of the notice not be accomplished. The Tenant stated that they have received one month of compensation through service of the Two Month Notice and have now been awarded an additional two months of compensation.

During the hearing, the Landlord did not dispute the Tenants' claim for plumbing costs and instead agreed to pay the Tenants \$399.00 for the cost of repairing a toilet during the tenancy. Therefore, this amount will be awarded to the Tenants.

As the Tenants were mostly successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenants are awarded a monetary order in the amount outlined below:

Two months compensation	\$5,000.00
Plumbing cost reimbursement	\$399.00
Recovery of filing fee	\$100.00
<b>Total owing to Tenants</b>	<b>\$5,499.00</b>

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$5,499.00** for compensation of two months' rent, reimbursement of plumbing costs and for the recovery of the filing fee for this application. The Tenants are provided with this 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