



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

RM appeared as agent on behalf of the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Is the tenant entitled to recover the filing fee for this application?



## **Background and Evidence**

This month-to-month tenancy began on March 1, 2014. Monthly rent was set at \$1,000.00 for this coach home, payable in advance on the first of each month.

It was undisputed by both parties that the tenant moved out on September 1, 2018 as per a 2 Month Notice issued to her by the landlords on July 31, 2018. The landlords stated on the 2 Month Notice the following reason for ending the tenancy: “the rental unit will be occupied by the landlord or the landlord’s spouse or close family member (father, mother, or child) of the landlord or the landlord’s spouse”. A copy was included as part of the tenant’s evidence.

The tenant is seeking compensation as the landlords did not use the home for the purpose indicated on the 2 Month Notice. The landlords’ agent confirmed in the hearing that the intention was for her to move in, but due to a change in circumstances, the landlords ended up re-renting the coach home instead. The home was re-rented for \$1,400.00 per month, and is still currently tenanted on a month-to-month basis. The landlords’ agent testified that they were always very respectful to the tenant, and that this was an “honest mistake”. The landlords’ agent testified that she wanted to help her parents out, and moved into the main home instead of the coach home, and re-rented the coach home.

## **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*



*(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords failed to comply with section 49(3) of the *Act*. The landlords' agent clearly stated that the landlords had re-rented the rental unit instead of occupying the rental unit as indicated on the 2 Month Notice. I find that the reasons provided for re-renting the coach home are not sufficient to support that there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose. Although I am sympathetic towards the fact that the landlords and landlords' agents were under a lot of stress in their lives, I find that the "honest mistake" resulted in the end of a tenancy for the tenant, who had complied by moving out and finding a new residence. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlords' noncompliance. I issue a monetary award to the tenant in the amount of \$12,000.00.

As the tenant was successful in her claim, I find that she is also entitled to recover the filing fee for this application.

### **Conclusion**

I issue a \$12,100.00 Monetary Order in favour of the tenant in compensation for the landlords' failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.



The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 14, 2019

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Residential Tenancy Branch