



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord acknowledged service of the tenant's application although it was allegedly sent to the wrong address. The landlord stated he was prepared to proceed with the hearing. The tenant confirmed receipt of the landlord's evidence package in response to the application.

### Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?  
Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The landlord took ownership of the rental unit which was already tenanted in February 2017. The tenant resided in the basement suite of the house.

On June 1, 2018, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of September 1, 2018.

The tenant vacated the rental unit one month early on August 1, 2018.

The tenant is claiming an amount equivalent to twelve times the monthly rent of \$950.00/month as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

The tenant testified that since taking over ownership of the home, the landlord made attempts to increase the rent. The tenant testified that he gave the landlord ample time to move-in after vacating however it wasn't until after he served the landlord with the application that the landlord showed up at the house with a moving truck. The tenant submits that the moving truck was just a ploy and that the landlord did not move any possessions into the home. The tenant testified that when he returned to the rental unit to pick up some mail, the landlord's mother-in-law opened the door but then quickly closed the blinds. The tenant submits that nobody is residing in the suite.

The landlord testified that they took possession of the basement suite at the end of July 2018 and took possession of the upper floor of the house at the end of August 2018. The upper floor had been occupied by another tenant. The landlord testified that after taking possession they did various upgrades to the house before moving in to the house in the last week of October 2018. The landlord testified that he did all the upgrade work himself with the help of his father-in-law. The landlord testified that he works himself so all of the work was done mostly on weekends so it took some time to get the house ready for them to move-in. The landlord submitted a receipt for the moving truck rental and various receipts and pictures of the renovation work. The landlord also submitted copies of a cable and utilities bills for service to the house in the landlord's name. The landlord testified that the home has been occupied by the landlord and his family since end of October 2018. The landlord testified that his parents in-law occupy the basement suite.

### Analysis

Section 51 (2) of the Act provides 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The onus in this case is on the applicant to establish that the respondent has not utilized the rental unit for the stated purpose. I find that the tenant has presented insufficient

evidence that the landlord did not occupy the rental unit with a reasonable period after the effective date of the Two Month Notice, September 1, 2018. The tenant has not provided any concrete evidence in support of his claim that the rental unit remains unoccupied. The tenant's submission is mere speculation. Rather, the tenant's own testimony supports that the landlord's mother-in-law was in the rental unit when he went there to pick up mail.

I find that on a balance of probabilities the landlord has moved into the rental unit as of the last week of October 2018. I find that given the landlord's testimony and supporting evidence with respect to the renovation work undertaken to make the house ready to occupy, this was a reasonable period after the effective date of the Two Month Notice.

The tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee paid for this application.

#### Conclusion

The tenant's 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: February 08, 2019

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Residential Tenancy Branch