



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants indicate in their application that they are requesting 12 month's rent in compensation due to the landlords failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 15, 2018 ("2 Month Notice").

The tenants, the landlords, and legal counsel for the landlords ("counsel") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Are the tenants entitled to a monetary order for under the *Act*, and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began on July 1, 2017. Monthly rent during the tenancy was \$1,300.00 per month and was not increased during the tenancy. The parties also agreed that the landlords served the tenants with the 2 Month Notice dated May 15, 2018. The effective vacancy date listed on the 2 Month Notice was July 31, 2018. The parties agreed that the tenants vacated the rental unit on July 27, 2018. The reason stated on the 2 Month Notice is listed as:

“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 tenants testified that they are seeking compensation for 12 month’s rent due to the landlords selling the home instead of occupying it as indicated in the 2 Month Notice. The landlords confirmed the tenants did vacate the rental unit on July 27, 2018 and that they sold the home as of November 1, 2018. The landlords testified that they initially listed the home for sale on September 18, 2018.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

The parties were advised during the hearing that the section 51(2) of the *Act* applies; however, the 12 month compensation portion of the *Act* was not enacted into law until

May 17, 2018 and the 2 Month Notice was dated May 15, 2018. Therefore, I must apply section 51(2) of the *Act* that was in effect at the time the 2 Month Notice was issued, which stated at that time the following:

**51(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.**

[Emphasis added]

Firstly, as the landlords admitted that they sold the home as of November 1, 2018, I find the landlords failed to comply with the reason stated on the 2 Month Notice for at least 6 months from the effective vacancy date listed on the 2 Month Notice, which was July 31, 2018, as indicated in section 51(2)(b) of the *Act*. The landlords sold the home instead of occupying it as of November 1, 2018, which I find results in the tenants being entitled to 2 month's rent for a total of **\$2,600.00** as monthly rent was \$1,300.00 per month.

As noted above, the 12 month compensation remedy did not come into force until May 17, 2018, and was also the date in which an arbitrator could excuse landlords from paying the tenants the amount required due to "extenuating circumstances" pursuant to section 51(3) of the *Act*. Therefore, as the *Act* had not yet changed until May 17, 2018, I find that I do not need to consider any extenuating circumstances as the *Act* did not provide for "extenuating circumstances" for the landlords when the 2 Month Notice was issued dated May 15, 2018.

Based on the above, I find the landlords owe the tenants **\$2,600.00**, which is double the \$1,300.00 monthly rent pursuant to section 51(2) of the *Act* as it applied on May 15, 2018, the date the 2 Month Notice was issued.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. The tenants have established a total monetary claim of **\$2,700.00** as described above. I grant the

tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,700.00** accordingly.

I dismiss the remainder of the tenants' claim for the other 10 months of compensation claimed, without leave to reapply, as that section of the *Act* had not yet come into force at the time the 2 Month Notice was issued.

### Conclusion

The tenants' application is partially successful.

The landlords failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenants have met the burden of proof and have established a total monetary claim of \$2,700.00. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$2,700.00. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 22, 2019

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Residential Tenancy Branch