



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD. and  
[tenant name suppressed to protect privacy]

## **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 twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenant PO appeared on behalf of both tenants (“the tenant”). The landlord attended the hearing. Lawyer MD representative represented the property management company PH; company employee RC was called as a witness. All parties had an opportunity to provide affirmed testimony, call witnesses and submit documentary evidence.

The parties did not raise issues of service. I find each party served the other pursuant to the requirements of the Act.

### *Preliminary Issue:*

The participant in the hearing, who identified himself as the landlord, provided evidence and participated in the hearing for 43 minutes. Upon cross-examination by MD, the participant acknowledged he was not the landlord, but was the landlord’s 19-year old son, RW. RW stated his father, the landlord, did not speak English well and RW was assisting him by purporting to be him. RW acknowledged he was the author of the landlord’s filed written submissions and stated they were “edited” by his father.

Because of the failure to properly identify himself, I directed RW to leave the hearing after 43 minutes; from that time until the end of the hearing, the landlord represented himself.

#### Issue(s) to be Decided

Are the tenants entitled to the following:

- A monetary order in an amount equivalent to twelve times 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 tenant testified he rented the unit from the landlord commencing July 1, 2017 for monthly rent of \$3,650.00 payable on the first of the month. At that time, the property management company PH was acting as agent for the landlord; a representative of PH signed the tenancy agreement; The tenant submitted a copy of the tenancy agreement; the agreement stated that the property management company PH is the agent of the landlord.

The tenant paid a security deposit of \$1,825.00 which the landlord returned when the tenancy ended on June 30, 2018.

The parties agreed that the property management company PH served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) dated and served on April 20, 2018 with an effective date of June 30, 2018. A copy of the Notice was submitted as evidence. 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).*

The employee RC of the property management company PH was called as a witness. RC testified that PH was acting on the basis of instructions from the landlord; PH was never the landlord. The tenant acknowledged he knew the property management company PH was acting for the landlord.

The tenant vacated the unit in early June 2018 pursuant to the Two Month Notice and the tenancy agreement terminated June 30, 2018.

The tenant testified that the landlord did not occupy the rental unit for the purpose stated on the Two Month Notice within a reasonable time after June 30, 2018 and accordingly, he is seeking twelve months' rent (corrected to two months') compensation.

The landlord acknowledged he advertised the unit for rent in June 2018. The tenants noticed the advertisement. The landlord testified the advertisement was in error due to miscommunication between the new property management company and the landlord. The landlord stated the new company entered into a lease with new tenants without his permission. As soon as the landlord discovered this unauthorized tenancy, the landlord testified he terminated the services of the new management company.

The landlord stated his intention was to have either his brother occupy the unit or his wife and son.

The landlord testified his wife and son RW occupied the house from September 3, 2018 to December 5, 2018, a period of three months. The house was vacant in July 2018 and after December 5, 2018. The unit remains vacant.

The tenant brought an application for dispute resolution on December 5, 2018.

### Analysis

I find that the property management company PH was always an agent acting on behalf of the landlord. The tenant acknowledged knowing that PH was not the landlord. I therefore dismiss the tenant's claims against PH without leave to reapply.

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 case, there was no dispute that the unit was vacant after the tenancy ended on June 30, 2018 except for a period of three months (between September 3 and December 5, 2018); the landlord testified the unit was vacant at the time of the hearing.

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

I find that in the circumstances, it was reasonable to expect the landlord to occupy the unit by September 1, 2018. The landlord had no reason to delay the occupancy by his family and provided no reason for their failure to remain in the unit.

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, in the 6 months following the end of the tenancy (from September 1, 2018 to February 1, 2019), the landlord's family only occupied the unit three months. I also find that the landlord did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Accordingly, I find that the tenant is 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 \$3,650.00. Therefore, the monetary compensation is equivalent to double the monthly rent.

As the tenant was successful in their application, I find that the tenant is 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 **\$7,400.00** calculated as follows:

ITEM	AMOUNT
Section 51(2) one month rent	\$3,650.00
Section 51(2) one month rent- doubling	\$3,650.00
Reimbursement of filing fee	\$100.00
<b>TOTAL</b>	<b>\$7,400.00</b>

Conclusion

I grant a monetary order in favour of the tenants in the amount of **\$7,400.00** 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: March 11, 2019

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Residential Tenancy Branch