



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

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

The Tenant and the Tenant’s father were present for the teleconference hearing, as were the two respondents who were the purchasers of the rental unit (will be referred to as the “Landlords”). The Landlords had a law student who presented testimony on their behalf, as well as legal counsel who was present as an observer only.

The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence package. Neither party brought up any issues regarding service.

The 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.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

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

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenant testified that the tenancy began in approximately 2013 and ended on July 20, 2018. Monthly rent was \$1,200.00. A security deposit and pet damage deposit of \$600.00 each were paid at the outset of the tenancy and have since been returned.

The Landlords testified that they took possession of the rental unit around July 24, 2018. They stated that as they intended to occupy the home that they purchased, they had asked the seller to serve the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The Two Month Notice, dated May 30, 2018, was submitted into evidence and states the end of tenancy date as July 31, 2018. The Two Month Notice stated the following as the reason for ending the tenancy:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The Landlords also submitted the 'Buyers Notice to Seller for Vacant Possession' form in which they requested that the tenancy be ended for July 31, 2018. This form was signed on May 30, 2018.

The Tenant state that after moving out he noticed an advertisement for the rental unit through a local buy and sell page. He stated that due to the Two Month Notice and to having to find a new place to live, he ended up having to move thirty minutes outside of town. The Tenant submitted the online advertisement into evidence which shows an advertisement for the home for the monthly amount of \$1,600.00. The advertisement submitted was not dated.

The Landlords testified that they asked the seller to provide the Two Month Notice to the Tenant in good faith as they did have the intention to occupy the rental unit. They further stated that their daughter was to move into the home in September 2018 after some renovations were completed. However, they stated that due to a falling out that occurred with their daughter, she decided to move to another city and not move into the rental

unit. As this home was purchased as the Landlords eventual retirement home, they stated that they decided that they would move into the home instead of their daughter.

The Landlords stated that they have custody of their grandchild and submitted custody documents which grant custody as of November 26, 2017. They stated that their grandchild did not want to move again and noted that their grandchild has challenges with anxiety. The Landlords submitted that due to this, they did not want to push the issue and force their grandchild to move again. Instead, they decided they would move into the home at a future date after their grandchild was no longer under their care.

The Landlords stated that they continued doing renovations prior to realizing that they would not be able to move in with their grandchild. They noted that they would do 40-50 hours of renovations per week and then go back to their other home to be with their grandchild in the evenings. The Landlords submitted a summary of the renovations completed as well as the total amount spent on renovations.

The Landlords stated that their subsidy for caring for their grandchild ended in November 2018 and as such, they were facing financial struggles and needed to rent out the home temporarily until able to move into the home in 2020. The Landlords stated that they found new tenants for the home for December 1, 2018. The Landlords stated that they acted on the advice of professionals in asking for the Two Month Notice to be served and that this was done with good faith intentions.

### Analysis

I accept the testimony and evidence of both parties that the Landlords, as new purchasers of the rental unit, asked the seller to serve the Tenant with a Two Month Notice under Section 49 of the *Act* on May 30, 2018. Upon review of the Two Month Notice, I find that it was issued in accordance with Section 49(5) of the *Act* stating that the landlord or a close family member would be occupying the rental unit.

I accept the testimony of the Landlords that their plans regarding occupying the home changed after service of the Two Month Notice and that they re-rented the home for December 1, 2018 after completion of renovations. Therefore, the matter before me is whether the Tenant is entitled to compensation under Section 51 of the *Act* or whether there were extenuating circumstances that led to the Landlords decision to not occupy the home.

Section 51(2) of the *Act* states the following:

(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.

Although the Landlords testified that they completed renovations with the intent to have their daughter move into the home or to move in themselves, the Landlord or a close family member did not move into the home. In the four months following the end of the tenancy, renovations were completed and then the rental unit was re-rented for a tenancy to begin on December 1, 2018. However, as the Landlords provided testimony regarding the circumstances that led to the unit being re-rented, I refer to Section 51(3) of the *Act* which states the following:

(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.

*Residential Tenancy Policy Guideline 50: Compensation for Ending a Tenancy* provides clarification on the definition of an 'extenuating circumstance' and notes that this would include circumstances where it would be unreasonable and unjust for a landlord to pay compensation. An example of this would be plans for a landlord's parent to move into the rental unit, but that parent passes away. Policy Guideline 50 further notes that a change of mind in the decision to occupy a rental unit may not be an extenuating

circumstance. In this matter, I find insufficient evidence before me to establish the Landlords decided to re-rent the rental unit due to extenuating circumstances.

I do not find that the daughter's decision to move to another city or the Landlords' decision to not move due to the circumstances of their grandchild qualify as extenuating circumstances that could not have been planned for. An extenuating circumstance is usually one which could not reasonably be anticipated or planned for in advance.

As a decision to end a tenancy has a significant impact on the tenant, prior to requesting service of a Two Month Notice, the Landlords had the responsibility to ensure that their plans to occupy the rental unit were finalized and in place. Had the Landlords purchased the home with the intent to complete renovations, it may have been possible to do so while the tenancy continued. I also note that the tenancy was not ended due to repairs or renovations that required the rental unit to be vacant.

While I understand the likely stress involved when their daughter and grandchild decided not to move into the rental unit, I do not find that this fits the definition of an extenuating circumstance and instead find that consideration should have been given to these circumstances prior to service of the Two Month Notice. I also note that the custody document of their grandchild was signed in 2017 and therefore was not an unexpected situation that arose after service of the Two Month Notice in May 2018.

Therefore, as the tenancy ended in July 2018 and the rental unit was renovated and re-rented by December 1, 2018, I find that the Tenant has established that the Landlords did not use the rental unit for the purpose stated on the Two Month Notice. As such, I find that Section 51(2) applies and that there are no extenuating circumstances present that would excuse the Landlords from their responsibilities under this section. Accordingly, I find that the Tenant is entitled to compensation equivalent to 12 months of rent.

The Tenant provided affirmed testimony that rent was \$1,200.00 per month and as the Landlords did not dispute this, I accept that this was his monthly rent at the time the Two Month Notice was served. Therefore, I find that the Tenant is entitled to compensation in the amount of \$14,400.00.

As the Tenant was successful with this application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00, for a total monetary award of \$14,500.00.

Conclusion

Pursuant to Sections 51, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$14,500.00**. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 28, 2019

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Residential Tenancy Branch