



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Monetary order for compensation or damages pursuant to section 67.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the tenants served the landlord in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to:

- Monetary order for compensation or damages pursuant to section 67.

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, I do not reproduce all details of their respective submissions and arguments here. I set out below the relevant and important aspects of the claims and my findings.

The parties testified that this one-year fixed term tenancy began on March 1, 2017. Rent was \$1,100.00 payable on the first of the month. At the beginning of the tenancy, the

tenant paid a security deposit of \$550.00. The unit was a basement suite. The landlord and his family lived on the main floor.

The parties agreed the landlord verbally informed the tenants on October 1, 2017 that they were conducting repairs of the main floor, wanted to live in the basement while repairs were taking place, and intended to sell the building. The landlord requested the tenants find another place to live by January 1, 2018. The landlord provided no written notice.

The tenants did not object to the request to move out or file a dispute of the notice. The tenants vacated the unit on December 2, 2017 and the security deposit was later returned to them. The tenants acknowledged they did not pay rent for November or December 2017.

The landlord testified he lived in the unit with his family from January 2018 to April 2018. while renovations were taking place; then the family moved back upstairs and started renting the unit again. The landlord explained that a contractor defrauded him of substantial funds and as a result the landlord was unable to carry out plans to list the property for sale after renovations were completed. The landlord has never listed the property for sale.

The tenants claim that the landlord did not take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or did not use the rental unit for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. The tenants seek compensation from the landlord of 12 months' rent under section 51(2).

### Analysis

Section 49 of the *Act* sets out how a landlord may give notice to end a tenancy for the landlord's use of the property.

Section 52 of the *Act* sets out the requirement for a valid notice to end tenancy under section 49 (reproduced in part below, emphasis added):

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- ...*
- (e) when given by a landlord, be in the approved form.*

The compensation provisions of section 51 (2) provide as follows in part:

*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) Subject to subsection (3), the landlord [...] 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.*

After reviewing the testimony of the parties and evidence filed, I find the tenants have failed to establish their claim on a balance of probabilities. Parties to a fixed term tenancy may mutually agree to terminate the tenancy early. I find the parties freely entered into an agreement to end the tenancy before the expiry of the term. The landlord requested that the tenants vacate early. The tenants did not object to the request to move out or file a dispute. Instead, the tenants voluntarily complied; they immediately started looking for an alternate place and when one was located, they moved out. Later, the tenants received the return of the security deposit; they did not pay rent for the last two months of the tenancy.

The parties agreed the landlord did not provide a written notice to the tenants. I find the tenants did not receive a notice to end tenancy under section 49 as any such notice must comply section 52. The compensation provisions of section 51(2) only apply where

a landlord properly gives notice in compliance with the *Act*, particularly sections 49 and 52.

Therefore, I find that section 51(2) does not apply to the circumstances of this case; consequently, the tenants are not entitled to any compensation under section 51(2).

Therefore, I dismiss the tenants' claim without leave to reapply.

### Conclusion

The tenants' claim 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: March 26, 2019

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Residential Tenancy Branch