



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAYN PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 15, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant M.B. and her Advocate D.W. attended the hearing for the Tenants. R.D. attended the hearing on behalf of the Landlord. All in attendance provided affirmed testimony.

M.B. testified that she served her Application and documentary evidence package to the Landlord by registered mail on January 18, 2019. The Tenants provided a copy of the registered mail receipt in support. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the start of the hearing, R.D. requested to adjourn the hearing based on a family emergency. R.D. stated that he tried to call the Tenancy Branch, however, could not get through to make the request prior to the hearing. R.D. stated that he was calling from

the care home and would need to excuse himself from the hearing should the Doctor need him.

M.B. did not consent to the hearing being adjourned on the basis that she had to take a day off from work and cannot afford to take more time off of work for another hearing in the future.

The Rules of Procedure 7.9 guide the Arbitrator to consider the following when allowing or disallowing a party's request for an adjournment; the oral or written submissions of the parties; the likelihood of the adjournment resulting in a resolution; the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; whether the adjournment is required to provide a fair opportunity for a party to be heard; and, the possible prejudice to each party.

In this case, I find that R.D. was able to call into the hearing and that there was no immediate need to adjourn the hearing based on the fact that R.D. may have to excuse himself from the hearing should the Doctor need him. It shall be noted that R.D. was able to participate during the full duration of the hearing.

M.B. indicated that she did not agree to the hearing being adjourned on the basis that she could not afford to take any more time off of work if the hearing were to be adjourned.

I find that by adjourning the hearing, it would create a possible prejudice to M.B. as she would not be able to take more time off of work for financial reasons. As such, in accordance with the Rules of Procedure 7.11, I find that the request for adjournment is denied.

#### Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 51 and 67 of the *Act*?
2. Are the Tenants entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2015. Rent in the amount of \$1,500.00 was due to the Landlord each month. The

Tenants paid a security deposit in the amount of \$750.00 which has since been returned to the Tenants. The tenancy ended on September 30, 2018 after the Tenants moved out of the rental unit.

M.B. testified that on August 27, 2018, she received a Four Month Notice from the Landlord which stated that the Landlord was ending the tenancy as they intend on demolishing the rental unit if needed, and perform renovations or repairs that are so extensive that the rental unit must be vacant. The Landlord also indicated that they have obtained all permits and approvals required by law to do this work. The Four Month Notice dated August 27, 2018, has an effective vacancy date of December 31, 2018. The Tenants submitted a copy into documentary evidence in support.

M.B. testified that the Tenants found a new rental unit and moved out on September 30, 2018, ending their tenancy in compliance with the Four Month Notice. M.B. stated that she was required to drive past her previous rental unit each day to drop her kids off at school. M.B. stated that it appeared as though the rental unit had been vacant until November 1, 2018, at which point it appeared as though some new tenants moved into the rental unit. M.B. testified that she notice that the rental unit had been listed for sale. The Tenants submitted a copy of the listing confirming that the rental unit had been listed for sale as of September 18, 2018.

M.B. stated that she assumed that the new tenants would be required to vacate the rental unit on December 31, 2018 which had been the effective date of the Landlord's Four Month Notice. M.B. stated that the new tenants continue to occupy the rental unit to this day. Furthermore, M.B. stated that she notice a sold sign belonging to the rental property on March 5, 2019. M.B. stated that there has been no evidence of any renovation, repairs or demolition to the rental unit as stated on the Four Month Notice.

In response, R.D. testified that the rental unit had mould, sewer and rodent infestation issues. R.D. stated that once the Tenants moved out of the rental unit, the Landlord cleaned the rental unit, remediating the mould issue by cleaning the mouldy areas of the rental unit. R.D. testified that the carpets were also cleaned and some carpet was replaced.

R.D. stated that the Landlord decided to re-rent the rental unit to temporary tenants and listed the rental unit for sale. R.D. stated that the rental unit sold and that the new owner takes possession of the rental unit on May 15, 2019.

R.D. stated that the rental unit does require the work indicated on the Four Month Notice; however, R.D. stated that the new owner will take on that responsibility.

M.B stated that the Tenants are seeking monetary compensation as a result of the Landlord not following through on the intended purpose that the Landlord indicated on the Four Month Notice. If successful, the Tenants are also seeking the return of the filing fee.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49(6) of the Act states that a Landlord may end a tenancy if the Landlord has all the necessary permits and approvals required by law and intends, in good faith, to renovate, repair and/or demolish the rental unit in a manner that requires the rental unit to be vacant.

I accept that the parties agreed that the Landlord served the Tenants with a Four Month Notice to End Tenancy dated August 27, 2018 with an effective vacancy date of December 31, 2018. The Four Month Notice indicates that the Landlord intended on demolishing the rental unit if needed, and perform renovations or repairs that are so extensive that the rental unit must be vacant. The Landlord also indicated that they have obtained all permits and approvals required by law to do this work.

I find the Landlord provided insufficient evidence to show they took the steps necessary to accomplish the stated purpose for ending the tenancy, and furthermore, I find the rental unit was not used for the stated purpose for at least six months after the tenancy is ended. Therefore, the Landlord is in breach of section 49 of the Act and I must apply 51( 2 ) of the Act.

Section 51 of the Act directs the Landlord who gives a Tenant notice to end the tenancy under Section 49 of the Act must pay the Tenant an amount that is the equivalent of twelve times the monthly rent payable under the Tenancy Agreement if 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 the rental unit is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the Notice.

As the Landlord has not taken steps to accomplish the stated purpose for ending the tenancy, I find that the Tenants are entitled to \$18,000.00 in compensation from the Landlord, pursuant to section 51(2) of the Act. As the Tenants were successful in their

application, I also find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the Act. As a result of the above and pursuant to section 67 of the Act, the Tenants are therefore entitled to a Monetary Order in the amount of \$18,100.00.

### Conclusion

The Landlord has breached Section 49 of the *Act*. Pursuant to section 51 and 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$18,100.00. The Tenants are provided with this 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: May 10, 2019

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Residential Tenancy Branch