



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTERN RENTAL PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenants and the landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they served the landlords with their application for dispute resolution on January 27, 2019 via registered mail. The landlords' agent confirmed receipt of the tenants' application but could not recall on what date. I find that the landlords were served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 1, 2017 and ended on April 30, 2018. Monthly rent in the amount of \$2,500.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords' agent testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") via registered mail but could not recall on what date. The tenants testified that they received the Two Month Notice on February 8, 2018. The tenants testified that they uploaded the Two Month Notice into evidence. Upon review of the uploaded evidence I was unable to locate the Two Month Notice. I allowed the tenants 24 hours to upload the Two Month Notice into evidence. The Two Month Notice was uploaded into evidence within the allotted time period. I admit the Two Month Notice into evidence.

The Two Month Notice states the following reason for ending this tenancy:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Both parties agree that the tenants moved out of the subject rental property pursuant to the Two Month Notice.

The landlords' agent testified that in November of 2017 the landlords entered into a contract with a builder to demolish the subject rental house and build a new house on the property. The building contract dated November 4, 2017 was entered into evidence. The landlord's agent entered into evidence a building permit which was issued on February 14, 2018.

The tenants testified that the subject rental property has not been demolished as indicated on the Two Month Notice, over one year since they were evicted. The tenants are seeking compensation in the amount of two months rent, pursuant to section 51 of the *Act*.

The landlords' agent testified that after the tenants moved out of the subject rental property the landlords decided to postpone demolition of the subject rental property due to a down turn in the market. The landlords' agent testified that the landlords still plan on tearing down the subject rental property and building a new house, but are waiting for the market to improve before they do so. The landlords' agent testified that no renovations, repairs or demolition has occurred at the subject rental property since the tenants were evicted.

### Analysis

On the date the Two Month Notice was served on the tenants, section 51(1) of the *Act* stated that 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.

On the date the Two Month Notice was served on the tenants, section 51(2) of the *Act* stated that in addition to the amount payable under subsection (1), if:

- 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
- 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

On May 17, 2018 changes to the *Act* came into effect which changed the amount payable from a landlord to a tenant under section 51(2) of the *Act* from double the monthly rent payable to 12 months' rent. This change came into effect after the tenants received the Two Month Notice; therefore, the tenants are only entitled to claim double the monthly rent payable under the tenancy agreement.

I find that the subject rental property has not been used for the purpose stated in the Two Month Notice for more than one year after the tenants moved out of the subject rental property. I find that is unreasonable for the demolition to not have commenced one year after the effective date of the Two Month Notice. I note that the market conditions are not relevant in making my decision.

As I have found that the rental unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, I find that the tenants are entitled to recover two months' rent from the landlords in the amount of \$5,000.00, pursuant to section 51(2) of the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlords, in accordance with section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$5,100.00

The tenants are 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: May 15, 2019

---

Residential Tenancy Branch