



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and the respective evidence submissions on file. The application was filed on January 1, 2019 and mailed to the landlord on January 5, 2019. The landlord acknowledged receipt of the application but stated that he didn't receive it until January 14, 2019.

### Issues

Are the tenants entitled to a monetary order for compensation for damage or loss?  
Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The tenancy for this ground floor suite began on December 15, 2016. The suite has two bedrooms plus an office which can be utilized as a third bedroom. Effective March 15, 2018 the monthly rent was \$1300.00 payable on the 1<sup>st</sup> day of each month.

On May 29, 2018, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date

of July 31, 2018. The notice was issued on the grounds that the landlord or a close family member intended to occupy the rental unit. The landlord also issued a similar notice to the tenants that were occupying the upper floor of this same rental property. Those tenants also filed a similar application against the landlord and that application was filed on December 13, 2018.

The tenants did not dispute the Two Month Notice and vacated the rental unit on July 31, 2018.

The tenants are claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

In support of the tenant's application, K.N. provided affirmed testimony on behalf of the tenants as follows:

- At the time of submitting their application on January 1, 2019 the landlord had not taken steps to move into the rental unit within a reasonable period after the effective date of the Two Month Notice.
- The rental unit was listed for sale and the landlord was having open houses up until December 7, 2018.
- The tenants submitted pictures of the both the lower and upper unit being empty and advertised on Craigslist on January 7, 2019.
- The landlord subsequently advertised their unit as being available for rent as a Homestay.

The landlord's son P.F. represented the landlord in this hearing and provided affirmed testimony as follows:

- At the time the Two Month Notice was given, the landlord's intention was to move-in.
- The landlord had planned to move in by August 31, 2018 after doing some cleaning and painting work.
- The move-in was delayed until possibly to end of September 2018 as the painters discovered a major rodent problem in the home. The house needed to be completely cleaned, sprayed and disinfected while it was vacant. The damaged insulation in the attic also needed to be replaced.
- In September 2018 there was a gutter back-up and water leaked into the home.

- This leak was a major issue resulting in damage to the flooring, drywall and insulation.
- This leak delayed the move-in by 30 days.
- In October 2018 a pipe burst which caused a further 25-30 day delay.
- The landlord submitted pictures of the damage from the two separate leaks and pictures of the subsequent repair work being underway.
- In November/December the contractors finally were able to deal with the initial rodent issue and finished the job on December 27, 2018. The landlord submitted a final invoice of this date from the contractor who did the attic restoration work.
- The landlord's moved into the upper portion of the home on January 7, 2019. An invoice of this date from a moving company was submitted in support. The invoice also included two short notice cancellation charges.
- The tenant's application was received 7 days after they moved in on January 14, 2019.
- The landlord's children had originally suggested renting out the ground floor to assist the landlord's with finances. An advertisement was originally placed on Craigslist on January 7, 2019 for renting both the ground floor and upper floor units. But this posting was removed the next day. Both units were listed to keep the landlord's options open of moving into either floor.
- The advertisement was then switched to an ad for private rooms as a homestay as the landlord did not want to rent out the other unit but rather wanted to share it with students. The homestay ads indicate the room is a private furnished room and a shared kitchen and bathroom. The ad indicates the landlord lives upstairs and meals can be provided at an additional monthly charge.
- There are currently two homestay students living in the two bedroom ground floor suite and he is occupying the office/third bedroom himself.
- He shares the kitchen and the bathroom with the homestay students on the ground floor.
- The house was listed for sale in April 2018 prior to the landlord's decision to move into the home.
- The plan was to move-in after the repairs were completed.
- Since the house was not livable anyway during the repair work they kept it listed as they figured this couldn't hurt.
- The realtor also insisted on keeping the house listed.
- The listing was originally set to expire on July 24, 2018 but they renewed temporarily throughout July and December 2018 as the realtor had some pending offers.

- The landlords were themselves renting a house and that lease was expiring on August 31, 2018. A copy of the lease was submitted.
- The landlords had to keep renewing their lease on a month to month basis as a result of the repair work being done at their own property.

In reply, the tenant K.N. submits as follows:

- There was no mention of P.F. occupying a portion of the ground floor in the landlord's evidence submissions and this hearing was the first they hearing of such.

### Analysis

Section 51 (2) of the Act provides that 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Pursuant to section 51(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.

The onus is on the applicant tenants in this case to prove on a balance of probabilities that the landlord did not accomplish the stated purpose of ending the tenancy within a "reasonable period". I find the tenants have met this onus and the landlord did not accomplish the stated purpose within a "reasonable period". I make this finding as the effective date of the Two Month Notice was July 31, 2018; however, the landlord did not "allegedly" accomplish the stated purpose until January 7, 2019, which is 5 months and 1 week after the effective date. I find that without any extenuating circumstances

preventing the landlord from moving into the rental unit, asking the tenants to vacate so the landlord could move-in and subsequently not doing so for over 5 months is not within a “reasonable period”.

As per section 51(3), the director can consider whether or not extenuating circumstances prevented the landlord from accomplishing the stated purpose. The onus would be on the landlord to establish such. I find the landlord has not provided sufficient evidence that extenuating circumstances prevented the landlord from moving in to the rental unit for over a 5 month period. While I accept that there may have been unexpected issues with rodents and leaks over the period the landlord was intending to move-in, the landlord did not provide sufficient evidence as to the extent of the timelines of the resulting repair work required. The landlord only provided testimony of blanket periods of delays caused by each issue. The landlord testified that the rodent issue delayed one month and then each of the leaks delayed for approximately an additional month each. The landlord did not submit any invoices to demonstrate the extent of the repair work and the dates on which any of the repair work relating to the two separate leaks was completed. The landlord only submitted one invoice which was for the final attic restoration work relating to the rodent issue which was not done until December 27, 2018. I find that the landlord owed an obligation to the tenants to accomplish the stated purpose for ending the tenancy within a reasonable period and if there was some unexpected renovation work required, to complete the required work within a reasonable period. Further, I note that the landlord did not even begin to occupy the upper portion of the home until after the landlord received the first application for dispute resolution from the tenants of that unit. The landlord also continued to list the property for sale up until December 7, 2018. These actions lead me to question the true motivations of the landlord. Therefore, the landlord is not excused of its liability under section 51(2) of the Act.

Lastly, even if I had found the landlord took steps to accomplish the stated purpose within a reasonable time, which I do not, I am not convinced that the rental unit in this case is even being occupied by the landlord or the landlord's son. The landlord has moved into the upper portion of the home which is a separate unit. The landlord's son is allegedly occupying the office/third bedroom on the ground floor unit and sharing this space with Homestay students. The landlord had as late as January 7, 2019 posted an advertisement listing both units as available for rent. Even though this advertisement was removed the same day, clearly at one point, the landlord was considering renting out at least one of the units. This was acknowledged by the landlord's son in this hearing. The ground floor bedrooms were subsequently listed as homestays. There is

nothing in the advertisements to suggest that the homestays rooms would be shared with the landlord or their son. Rather, the advertisements clearly state that the landlord will be living upstairs. Further, there is nothing in the landlord's submissions to suggest that the landlord's son was also occupying a room within the ground floor suite. Other than his testimony in this hearing, which was the first time the tenant's also heard such, the landlord has not provided any other evidence that the landlord's son is occupying the ground floor suite and sharing the space with homestay students. Based on the above, I find that on a balance of probabilities, the landlord has failed to accomplish the stated purpose for ending this tenancy.

I allow the tenants claim and award an amount of \$15,600.00, which is twelve times the monthly rent of \$1300.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$15,700.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$15,700.00. 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 21, 2019

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Residential Tenancy Branch