



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter: Service

The claim for compensation is in relation to a two month notice for landlord’s use (the “Notice”) wherein the stated reason for the Notice was that the Landlord or a close family member of the Landlord intended to occupy the rental unit. The Tenant states that the application for dispute resolution, notice of hearing and all evidence was served on the Landlord by registered mail on April 11, 2019 to the address of the rental unit and to the Landlord’s address as set out on the tenancy agreement. The Tenant states that both registered mail packages were returned. The Tenant provides a copy of a land title document indicating that the Landlord remains named as the owner of the rental unit. The Tenant states that another person rented the unit in June 2019 and that this person confirmed that the unit was being rented from the same Landlord.

Section 89(1)(c) of the Act provides that one of the allowed methods of service of an application for dispute resolution is to the address at which the person carries on

business as a landlord. Given the undisputed evidence that the address of the rental unit continues to be owned by the Landlord and the evidence that the rental unit has been rented to another tenant with the same Landlord, I find that the rental unit is an address at which the Landlord carries on business as a landlord and that the Tenant has therefore served the application in accordance with the Act. Section 90(a) of the Act provides that a document served by registered mail in accordance with section 89 of the Act is deemed received on the fifth day after it was mailed. Based on the undisputed evidence that the Tenant sent the application for dispute resolution by registered mail on April 11, 2019 I find that the Landlord is deemed to have received the application for dispute resolution by April 16, 2019.

#### Issue(s) to be Decided

Has the Landlord or a close family member of the Landlord occupied the rental unit?

Is the Tenant entitled to the equivalent of two months rent as compensation?

Is the Tenant entitled to additional compensation?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy under written agreement started on April 1, 2017. Rent of \$4,000.00 was payable on the first day of each month. The tenancy was ended by the Landlord who served the Tenant with the Notice dated January 24, 2018. The Notice carries an effective move-out date of April 1, 2018 and sets out that the Landlord or a close family member of the Landlord intended to occupy the unit. The Tenants moved out of the unit on March 31, 2018.

The Landlord never moved into the unit. Prior to receiving the Notice, the Landlord informed the Tenants that the Landlord intended to sell the unit. After receipt of the Notice and during March 2018 the rental unit was shown to prospective buyers. On April 23, 2018 the Tenants found the rental unit listed for sale and the listing indicated the unit was vacant. The Landlord's Agent that acted for the Landlord during the

tenancy informed the Tenants that the listing for sale was removed in July 2018. On October 19, 2018 a neighbour of the rental unit informed the Tenant that nobody was ever seen living at the unit. In October 2018 animals had strewn garbage around the yard and in November 2018 this garbage was still present. The Tenant provided a photo of the yard taken in November 2018. In November 2018 the Landlord's agent was again contacted and this agent informed the Tenant that the agent no longer had any contact information for the Landlord. In February 2019 the rental unit appeared to be staged for sale however by June 2019 the unit had been rented.

The Tenant claims the equivalent of two month's rent in compensation for the Landlord not using the rental unit as stated in the Notice. The Tenant also claims moving costs.

### Analysis

At the time the Notice was issued, Section 51(2) of the Act provided that if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use within a reasonable period after the effective date of the notice, or

(b) 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.

Based on the undisputed evidence of the unit being for sale from at least April 23, 2018 to July 2018, the undisputed evidence from the neighbors that by mid October 2018 nobody was seen living in the unit, and the undisputed evidence that garbage was left around the yard for a couple of months to November 2018, I find that the Tenant has substantiated that the Landlord did not take any steps to occupy the unit within a reasonable period of time after the effective date of the Notice. The Tenant is therefore entitled to compensation of **\$8,000.00**. As the Act sets out the amount of compensation

for this type of breach I find that there is no basis to claim any additional amounts for the same breach and I dismiss the claim for moving costs. As the Tenant has been successful with the primary claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$8,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$8,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 15, 2019

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Residential Tenancy Branch