



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing, as was the Landlord and the Landlord’s spouse (the “Landlords”). The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. While the Tenant submitted one document to the Residential Tenancy Branch less than 14 days prior to the hearing, the Landlords confirmed receipt of this document and therefore the evidence of both parties is accepted and will be considered in this decision. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also stated on the tenancy agreement submitted into evidence. The tenancy began on July 1, 2012. Monthly rent was initially \$700.00 and was \$750.00 by the end of the tenancy. A security deposit of \$350.00 was paid at the start of the tenancy. The Tenant moved out on November 11, 2018.

The Tenant provided testimony that she received verbal notice in August 2018 from the previous Landlords/home owners that they had plans to sell the residential property. She stated that there was some back and forth about whether she would be able to stay in the rental unit when the home was sold, but after being told she could stay she received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The Two Month Notice dated October 22, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenant confirmed receipt of the Two Month Notice on October 22, 2018. The effective end of tenancy date of the notice was stated as December 31, 2018.

The Tenant stated that due to personal circumstances it would have been difficult to move in December 2018, so they vacated the rental unit early on November 11, 2018. She stated that at the time she did not question the notice as she believed that the new Landlords/home owners needed the rental unit for a family member.

The Tenant testified that on November 26, 2018 she saw an advertisement for the rental unit on Facebook for the monthly rent of \$1,400.00. The Tenant submitted copies of the advertisements into evidence. She noted that she had three colleagues call the number listed on the advertisement and stated that one was told that the rent could be lowered if a one year agreement was signed. The Tenant stated her belief that the Landlords ended her tenancy to raise the rent and noted that they never spoke to her about options for staying such as increasing her rent.

The Landlords testified that they had plans for their father to move into the rental unit after they took possession of the home. As such, they stated that they received advice from their realtor to end the tenancy through a Two Month Notice. They confirmed that through the contract of sale documents they asked the previous home owners to serve the Two Month Notice to the Tenant.

The Landlords submitted an addendum to the contract of purchase and sale for the property dated October 18, 2018. In the addendum the Landlords, as the purchasers, requested that the seller issue two months notice to the Tenants to end the tenancy by December 31, 2018. The Landlords also submitted another addendum dated November 11, 2018 which states that the rental unit is now vacate. The Landlords stated that they took possession of the home on November 24, 2018.

The Landlords provided testimony that their father had plans to come to Canada and move into the rental unit shortly after they took possession, although they noted that he was not willing and needed some convincing. They further stated that on November 10, 2018 their father fell which exacerbated existing health issues making it difficult to fly. The Landlords referenced a doctor's note dated November 10, 2018 which was submitted into evidence.

The doctor's note states that the Landlords' father is suffering from osteoarthritis of both knees and states that he is unable to sit or walk and should avoid air travel.

The Landlords stated that their father has plans to move into the rental unit for July or August 2019 now that he is able to travel. They submitted a doctor's note dated April 19, 2019 stating that their father is now able to travel by air.

The Landlords were in agreement that they advertised the rental unit beginning in November 2018 after they became aware that their father would be unable to move in right away. They stated that this was not about money but instead about safety of having someone in the rental unit. They stated that they received advice to advertise for \$1,400.00 but ended up renting for \$900.00. The Landlords submitted that the current tenants are moving out on June 30, 2019 and their father will be moving in.

The Landlords noted that it was difficult to find a new tenant due to the temporary situation as they were only able to consider a month-to-month tenancy. They stated that they were unaware of the legalities of the situation and had they been aware they would

have advertised the rental unit more discreetly while waiting for their father to be able to travel and move in. The Landlords also noted that had the Tenant not moved out prior to the effective date of the Two Month Notice, she would have been able to stay longer when their father was unable to move in.

### Analysis

The Tenant applied for compensation in the amount of \$15,525.00 which she stated was 12 months of rent for the two rental units she has resided in following the end of the tenancy in dispute. It was clarified that the Tenant was seeking compensation pursuant to Section 51(2) of the *Act* and therefore the amount to be claimed is 12 months of rent for the amount of rent paid for the rental unit for which the tenancy was ended through a Two Month Notice. As the parties agreed that rent at the end of the tenancy was \$750.00 per month, I will therefore consider compensation in the amount of \$9,000.00 as this is 12 months of compensation pursuant to Section 51(2) of the *Act*.

Section 51(2) of the *Act* states the following:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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.

Section 51(3) of the *Act* also states the following regarding extenuating circumstances:

(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.

Therefore, I find it relevant to find whether the Landlords took reasonable steps to accomplish the stated purpose of the Two Month Notice and if not, if there were extenuating circumstances which prevented them from doing so.

The Tenant was served with the Two Month Notice on October 22, 2018 and although the effective end of tenancy date was December 31, 2018, chose to move out early. Following the end of the tenancy the parties were in agreement that the Landlords' father did not move into the rental unit as planned and also agreed that the rental unit was advertised for rent beginning in November 2018. Therefore, I find that the rental unit was not used for the stated purpose of the Two Month Notice which was that the purchasers of the home/Landlords or a close family member would occupy the rental unit.

However, regarding the extenuating circumstances clause in Section 51(3) of the *Act*, I refer to *Residential Tenancy Policy Guideline 50* which states the following:

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation.*

As such, an extenuating circumstance is one which is beyond the control of the Landlords that interferes with the plans as stated on the Two Month Notice. While the Landlords provided testimony that their father was unable to travel due to health issues, they also stated that their father was initially unwilling to move to Canada and had to be convinced. They also provided testimony that they would have advertised the rental unit more discreetly had they been aware of the consequences.

The medical note regarding their father's health does not indicate that there was a fall or other incident that caused a medical condition. Instead, I find that the doctor's note establishes that their father had health issues, but not that they are new issues that

arose in November 2018 and changed the initial plans to move. Based on this, as well as the conflicting testimony from the Landlords, I find, on a balance of probabilities, that there were not extenuating circumstances that were beyond the control of the Landlords that prevented their family member from occupying the rental unit. Instead, I find that the Landlords had the previous home owner serve the Two Month Notice prior to finalizing their plans for the rental unit such as confirming their father was willing and able to move into the unit.

Therefore, as I find that steps were not taken to accomplish the stated purpose of the Two Month Notice and that there were no extenuating circumstances present, that the Tenant is entitled to compensation pursuant to Section 51(2) of the *Act*. As stated, this is the equivalent of 12 months of rent which was \$750.00 at the end of the tenancy as agreed upon by both parties.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is granted a Monetary Order in the amount of \$9,100.00 which is 12 months compensation as well as the recovery of the filing fee.

### Conclusion

Pursuant to Sections 51 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$9,100.00** as outlined above. The Tenant is 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: July 3, 2019

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Residential Tenancy Branch