



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

On April 5, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”).

Both the Tenants and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package to the Landlord by registered mail on April 10, 2019 and the Landlord confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that his evidence was served to the Tenants by registered mail on June 12, 2019 and the Tenants acknowledged that they received this evidence. This evidence was served within the timeframe requirements in accordance with Rule 3.15 of the Rules of Procedure. As such, I am satisfied that the Tenants were sufficiently served with the Landlord’s evidence and this evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2013 and the tenancy ended when the Tenants vacated the premises on December 31, 2018. Rent was established at \$1,040.00 per month and was due on the first of each month. A security deposit was not paid.

All parties agreed that the Tenants were served with the Notice dated October 14, 2018. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlord indicated on the Notice that the effective date of the Notice was December 31, 2018.

The Tenants advised that they rented the entire house and after they vacated the rental unit, the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice, pursuant to the *Act*. They stated that the Landlord moved into the rental unit after they vacated. However, they discovered that in March 2019, the Landlord vacated the upper part of the rental unit, moved into the lower part of the rental unit, and rented out the upstairs portion to new tenants. They provided a letter from a neighbour confirming that new tenants moved into the upstairs in March 2019 and they submitted pictures of these tenants moving in as well, to support their claim. Their position is that they are owed compensation in the amount equivalent to twelve months' rent (**\$12,480.00**) pursuant to Section 51(2) of the *Act* as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

The Landlord advised that him and his wife moved into the rental unit after the effective date of the Notice. However, they were not able to do a move-out inspection report with the Tenants as they were conducting their own move-out inspection on the place that they were moving from. When they moved in, they discovered many deficiencies, significant damages, and repairs that the tenants neglected to inform the Landlord of during their tenancy, and this is their responsibility to do so. He submitted that due to the "horrendous cost of unreported damages and repairs left by the tenants, it made it financially unfeasible for us to continue to occupy the entire house. Hence out of

financial necessity we rented the upstairs out and moved downstairs.” He confirmed that they moved into the downstairs portion of the rental unit and re-rented the upstairs for April 15, 2019. He submitted invoices for moving, costs for repairs, and other documentary evidence to support his position. He stated that he never conducted any inspections on the rental unit because he trusted that the Tenants would inform him of any issues and he did not want to intrude on the Tenants’ privacy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 29 of the *Act* states that the Landlord may inspect the rental unit monthly if the Tenants give permission at the time of the entry or if the Landlord gives the Tenants written notice, at least 24 hours and not more than 30 days before the entry, indicating the purpose for entering and the date and the time of the entry.

With respect to the Tenants’ claim for twelve-months’ compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on October 14, 2018 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**51 (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.*

*(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.*

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, the policy guideline outlines the following about extenuating circumstances: “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. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlord advised that his intention was to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act*, and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. As the Landlord does not dispute this, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose as per the *Act*.

The Landlord advised that the extenuating circumstance that prevented him from using the rental unit for the stated purpose for at least six months was because of unreported, extensive damages and repairs. As well, he stated that had he known about the extent and the cost of the repairs, his wife would not have retired so that they could pay for these costs. However, I am not satisfied that these would constitute extenuating or

unforeseen circumstances as the Landlord failed to inspect the rental unit while it was rented to the Tenants and failed to conduct a move-out inspection report with the Tenants at the end of the tenancy. I find that these alleged issues could have been anticipated or discovered had the Landlord inspected the rental unit. Consequently, I am not satisfied that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Ultimately, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$12,480.00**.

### Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$12,480.00** 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 13, 2019

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Residential Tenancy Branch