



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under section 51 of the Act, and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Are the tenants entitled to a monetary order for compensation?

### Background and Evidence

The tenancy began on July 7, 2017. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenants.

The parties agreed that the tenants were served with a Two Month Notice to End Tenancy for Landlords Use of Property, issued on June 28, 2018 and vacated the property on September 7, 2018.

The reason stated in the Notice was that:

- The rental unit will 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 tenants made an application to dispute the notice to end tenancy as they believed the landlords had an ulterior motive. The tenants cancelled the hearing and accepted the notice to end tenancy for the reason stated.

The tenants testified that they did not receive compensation for receiving the notice to end tenancy equal to one month's rent. The tenants stated all rent was paid, including the seven days of September 2018.

The landlords testified that the tenants did pay rent and were not compensated the amount equal to one month's rent. The landlords stated that the tenants had filed a previous application, and then later cancelled it. The landlords stated that the tenants never asked for the money.

The tenants testified that they believe the landlords did not use the premises for the stated reasons of their son living in the space. The tenants stated that on November 12, 2018, they found an advertisement on a popular website to rent the unit and the rent was significantly higher. Filed in evidence are copies of the advertisement.

The landlords testified that their son who was 24 years old moved into the premises with their partner for the first time. The landlords stated that it was a couple of months later that their son told them that they were having problems, and that their partner was considering moving. Filed in evidence is a written tenancy agreement that shows the landlord's son and partner entered into a tenancy agreement.

The landlords testified that they did place an advertisement only because their son was concerned that he would be unable to pay the rent, if their partner decided to move out. The landlords stated that they were hopeful to find a roommate for their son or alternative a new renter. The landlords stated that they simply copy the original advertisement and did not edit it to reflect a roommate situation.

The landlords testified that the advertisement was posted for approximately 13 days and it was taken down because their son and his partner were able to work out their differences. The landlords stated that their son and partner lived in the unit for over six months and that they have recently just separated. The landlords stated that their son was living in the rental unit exceeding the 6 months requirement.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 51 of the Act, states:

**51** (1) 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.

I am satisfied based on the evidence of both parties that the tenants did not receive compensation as required by section 51(1) of the Act. Simply because the tenants did not specially request the amount when vacating does not release the landlords from their obligation under the Act. I find the landlords breached the Act, when they failed to give the tenants compensation as required by the Act. Therefore, I find the tenants are entitled to compensation that is the equivalent of one month's rent in the amount of **\$1,100.00.**

Section 51 of the Act, states:

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

I accept the evidence of both parties that the rental unit was advertised for rent approximately 2 ½ months after the tenants vacated on September 7, 2018.

While I accept that the advertisement of the rental unit standing alone are suspicious and do not support the landlords were actually looking a roommate for their son. However, I find the landlords explanation that they were informed by their son that his partner after two months was thinking of leaving and the advertisement was posted due extenuating circumstances as their son would not being able to pay the rent should his partner vacate.

I find any new living arrangement can be difficult. I find the landlords explanation reasonable based on their testimony. In addition, the advertisement was removed shortly after it was posted as the landlord's son and partner were able to work out their differences and they remained in the rental unit for at least six months. The letter from the tenant's son supports this.

As the tenants have the burden of proof to prove that the unit was not used for the stated purpose and that the landlord's son was not living in the premise for at least six months, I find the tenants have not met that burden. Therefore, I find the tenants are not entitled to compensation pursuant to section 51(2) of the Act.

I find the tenants have established a monetary order in the amount of **\$1,200.00** comprise of the above amount and the cost of \$100.00 to recover the cost of the filing fee from the landlords.

This order is enforceable in the Provincial Court (Small Claims) should the landlords fail to pay the monetary order forthwith. The landlords are **cautioned** that costs of such enforcement are recoverable from the landlords.

### Conclusion

The tenants are granted a monetary order in the above noted amount.

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: August 07, 2019

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Residential Tenancy Branch