



# Dispute Resolution Services

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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 his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 7, 2019. Both parties confirmed the tenant served the landlord with the amendment to the application for dispute via Canada Post Registered Mail on August 23, 2019. Both parties confirmed the landlord served the tenant with their submitted documentary evidence in person on August 26, 2019. Neither party raised any service issues.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2012 on a fixed term tenancy ending on April 30, 2013 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 24, 2012. The monthly rent began at \$750.00 payable on the 1<sup>st</sup> day of each month and through a notice of a rent increase dated May 30, 2018 was later increased to \$780.00. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid.

Both parties confirmed that the property consisted of a bachelor suite, a 2 bedroom suite and a 3 bedroom suite of which the tenant had occupied the bachelor suite. The landlords stated that they had moved into and occupy the 2 bedroom suite.

The tenant seeks a clarified monetary claim of \$10,677.57 which consists of:

\$9,360.00	Compensation, Sec. 51 Fail to Comply
\$73.45	Storage Fee, December 2018
\$73.45	Storage Fee, January 2019
\$73.45	Storage Fee, February 2018
\$73.45	Storage Fee, March 2019
\$73.45	Storage Fee, April 2018
\$73.45	Storage Fee, May 2019
\$73.45	Storage Fee, June 2018
\$73.45	Storage Fee, July 2019
\$73.45	Storage Fee, August 2019
\$48.59	Storage Lock
\$10.07	USB Drive
\$28.40	Registered Mail, Claim
\$87.31	Mail Forwarding Fee
\$54.86	Carpet Cleaning
\$400.00	Estimated, Trips to and from Storage
\$27.29	Registered Mail Fee for Evidence

Discussions with both parties on the tenant's monetary claim were made in which the following items were noted by the tenant as additional compensation for costs incurred by the tenant in complying with the 2 month notice dated September 22, 2019.

\$73.45	Storage Fee, December 2018
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\$73.45	Storage Fee, January 2019
\$73.45	Storage Fee, February 2018
\$73.45	Storage Fee, March 2019
\$73.45	Storage Fee, April 2018
\$73.45	Storage Fee, May 2019
\$73.45	Storage Fee, June 2018
\$73.45	Storage Fee, July 2019
\$73.45	Storage Fee, August 2019
\$48.59	Storage Lock
\$87.31	Mail Forwarding Fee
\$54.86	Carpet Cleaning
\$400.00	Estimated, Trips to and from Storage

Both parties confirmed their understanding that the tenant was seeking these costs as compensation for failing to comply pursuant to section 51 of the Act after the tenant vacated the rental unit. Both parties were advised that the Act only provides for compensation for an amount equal to 12 months of the monthly rent under the tenant's tenancy agreement. As such, this portion of the tenant's application is dismissed.

The tenant also seeks recovery of costs incurred listed below for preparation of the hearing in copying the evidence, delivering the evidence and the application for dispute.

\$10.07	USB Drive
\$28.40	Registered Mail, Claim
\$27.29	Registered Mail Fee for Evidence

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for recovery of litigation costs (usb, registered mail) are dismissed.

Both parties confirmed their understanding that the tenant's monetary claim would only proceed on:

\$9,360.00	Compensation, Sec. 51 Fail to Comply, \$780.00 X 12 months
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The tenant seeks a monetary claim of \$9,360.00 which consists of \$780.00 in monthly rent for 12 months as the landlord has failed to comply with section 49 of a 2 month

notice to end tenancy for landlord's use. The 2 month notice dated September 22, 2018 for landlord's use provides for 1 selection made for the reason as:

All 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.

Both parties confirmed the contents of the notice and that the tenant complied with the 2 month notice and vacated the rental unit on November 30, 2018.

The tenant claims that the landlord failed to comply with the Notice to End Tenancy issued for landlord's use dated September 22, 2018 by re-renting the unit instead of the reason provided. The tenant stated that the landlord had advised him in person (as shown in a audio recording) that he intended to advertise and rent it on "AirBnB". The tenant stated that he confirmed this by locating an advertisement by the landlord in May 2019 for short term rentals. The landlords confirmed the tenant's claims stating that discussions had taken place and that he did advertise the unit on "AirBnB" despite giving notice that the bachelor suite was for landlords' use. The landlords clarified that the original plan was for his son to occupy one of the spaces with his girlfriend, but that circumstances had changed that prevented it. The tenant argued that why would you have your son and his girlfriend reside in a bachelor suite when the 3 bedroom suite was available. The landlords stated that when they planned this they did not know who would occupy what space. The landlords also clarified that it was their hope that the landlords, other son would occupy one of the units, but did not as well. The tenant argued that why would the landlord's son and girlfriend occupy a bachelor unit if a 3 bedroom was available. The tenant also refers to an audio recording with the landlord in December 2018 in which the landlord is noted as stating that he would be advertising the bachelor unit for rent on "AirBnB".

In support of this claim the tenant has provided copies of:

2 month notice dated September 22, 2019  
Signed Tenancy Agreement dated October 24, 2012  
Audio recording of landlord admitting to intent to rent on AirBnB  
AirBnB advertisements

### Analysis

Section 49 (5) of the Act states in part that a landlord may end a tenancy if all the conditions on which the sale depends have been satisfied and the purchaser asked the landlord, in writing, to give notice to end tenancy on one of the following grounds:

The purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

In this case, both parties confirmed that the purchaser (the named landlord) gave notice in writing requesting vacant possession of the tenant's rental unit as all conditions of the sale have been met and the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit. The tenant vacated the rental unit on November 30, 2018 as per the 2 month notice.

Section 51 of the Act, re: section 49 notice, states in part, 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 to 12 times the monthly rent payable under the tenancy agreement, if

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

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.

In this case, the tenant has provided undisputed evidence that the landlords advertised the rental unit in May via "AirBnB" for short term rental for May, June and July 2019. The landlords provided direct testimony in confirmation. I find that the landlords advertised the bachelor suite for rent within the 6<sup>th</sup> month following after the tenant vacated the rental unit.

Based upon the above, I find that the tenant has established a claim for compensation under section 51 of the Act.

The landlords provided details of the circumstances following the service of the 2 month notice dated September 22, 2019 in which it was their plan to have the landlord's son and his girlfriend occupy one space and the other landlord's son occupy another. Both of which did not occupy any of the units in the property. The only occupied space is that

of the named landlords' in the 2 bedroom suite. The landlord was not forthcoming when asked who would occupy either unit. The landlord, Z.L.G. had stated that they did not know who would live where.

Section 51 (3) states that the purchaser may be excused from paying the tenant the amount required if, extenuating circumstances prevented the purchaser from using the rental unit for the stated purpose for at least 6 months duration. In this case, the landlords have described changing circumstances as early as December 2018 in which one son could not occupy a unit due to commitments in a tenancy agreement and another son who did not wish to occupy another unit. I also note that both parties provided confirmed details of an audio recording in which the landlord, K.G. admitted that he would be advertising the bachelor suite with "AirBnB" in December 2018. Based on this, I find that the landlord has provided no extenuating circumstances to excuse this requirement. The tenant is granted a monetary order for \$9,360.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$9,460.00.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the 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: September 12, 2019

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Residential Tenancy Branch