



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MT, CNL, OLC, MNDCT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 20, 2016 ("2 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 2 Month Notice, pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, landlord AB ("purchaser") and landlord MS ("landlord"), landlord MS's agent ("landlord's agent"), and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent, who is his son, had permission to speak on his behalf. This hearing lasted approximately 63 minutes.

### Preliminary Issue - Previous Hearings and Service of Documents

This hearing originally occurred on March 28, 2018 ("original hearing") after which a decision, dated April 30, 2018 ("original decision"), was issued by a different Arbitrator. The original decision granted the tenants a monetary order of \$2,900.00 ("original monetary order") for double the monthly rent of \$2,800.00 and the \$100.00 application filing fee, against the purchaser only, not the landlord.

The purchaser applied for a review of the original decision, alleging that he was unable to attend the original hearing. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated August 15, 2019 ("review decision"). As per the review decision, the purchaser was required to serve the tenants and the landlord with a copy of the review decision, the notice of review hearing, and the purchaser's address for service.

The tenants and the landlord confirmed receipt of the above review documents from the purchaser. In accordance with sections 89 and 90 of the *Act*, I find that the tenants and the landlord were duly served with the required review documents from the purchaser.

The purchaser stated that he did not serve his written evidence package to the tenants. The tenants claimed that they did not receive any written evidence from the purchaser. I notified all parties that I could not consider the purchaser's written evidence at this hearing or in my decision because it was not served to the tenants, as required.

#### Preliminary Issue - Service of Landlord's Original Application

The purchaser confirmed receipt of the tenants' original application. In accordance with sections 89 and 90 of the *Act*, I find that the purchaser was duly served with the tenants' original application.

The landlord confirmed that he was not served with a copy of the tenants' original application. The tenants claimed that they did not serve the landlord because the original decision and monetary order were not made against him, only the purchaser. As this review hearing decision is only related to the purchaser, I do not find it necessary to consider service of the tenants' application to the landlord.

The tenant confirmed receipt of the landlord's 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice.

At the outset of the hearing, the tenants confirmed that they vacated the rental unit and they did not wish to cancel the 2 Month Notice or an order for the landlord to comply. They stated that they were only seeking the monetary order for the \$2,800.00 plus the \$100.00 application filing fee. Accordingly, the tenants' application, with the exception of the monetary orders, are dismissed without leave to reapply.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2007 and ended on October 3, 2016, with the landlord. The tenants and the landlord signed a written tenancy agreement. Monthly rent of \$1,400.00 was payable on the first day of each month. The purchaser bought the rental unit from the landlord on August 2, 2016 and took possession of the unit on October 7, 2016. The rental unit is a house.

The tenants seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,400.00, totalling \$2,800.00, plus recovery of the \$100.00 application filing fee. The tenants claimed that because the purchaser did not use the rental unit for the stated purpose on the 2 Month Notice, the tenants are entitled to compensation.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice was:

- *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 tenants testified that the purchaser did not move into the rental unit after the tenants moved out. They said that he renovated the house and then sold it within a one-year period. They said that the house was "staged," there was no one living there, the realtor posted photographs of the unit for sale which were provided, and there were no cars in the driveway when the tenants drove by. The tenants maintained that while

they did not “camp out” and watch the rental unit at all times, they believe no one was living there.

The purchaser disputes the tenants’ application. He stated that he asked his realtor for vacant possession of the rental unit because he wanted to move in with his family. He claimed that he moved into the rental unit on October 15, 2016, his wife moved in at the end of November 2016, and his children moved in the first week of December 2016. He said that he first renovated the rental unit before moving in because his children are allergic to pet dander, so they had to remove the carpets. He maintained that he had parties at the rental unit and many of his friends and family visited and saw him living there. He said that he had a number of cars at the rental property so he does not know how the tenants did not see them parked in the driveway. The purchaser explained that he moved there because it was close to his work and his wife’s work, but it was further away from his children’s schools. He claimed that he sold the rental unit in October 2017, a year after he moved in, because it was too far to commute for his children’s schools and extracurricular activities.

The landlord’s agent testified that the rental unit was sold to the purchaser and that the realtors dealt with the vacant possession. He said that he went to the rental unit to pick up some items and saw the purchaser living there. He claimed that he is aware that the purchaser did not renovations to the rental unit because it had not been updated by the landlord before it was sold to the purchaser. He stated that he is aware that the purchaser moved out and sold the rental unit at a later date.

### Analysis

Subsection 49(5) of the Act states that a landlord may end a tenancy in respect of a rental unit where all of the conditions for the sale of the rental unit have been satisfied and the purchaser or a close family member intends in good faith to occupy the rental unit.

Section 51(2) of the Act previously established a provision whereby tenants were entitled to a monetary award equivalent to double the monthly rent if the landlord did not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) previously stated:

*51 (2) In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

I make the following findings, on a balance of probabilities. The tenants vacated the rental unit on October 3, 2016, pursuant to the 2 Month Notice. The purchaser moved in to the rental unit on October 15, 2016 and the remainder of his family moved in to the rental unit in November and December 2016. I find that the purchaser moved in to the rental unit within a reasonable period of time after the effective date of the 2 Month Notice. The purchaser sold the rental unit and moved out in October 2017, approximately one year after taking possession. I find that the purchaser lived in the rental unit for at least six months after the effective date of the notice. The landlord's agent confirmed that he saw the purchaser living in the rental unit after the tenants moved out.

The tenants speculated that no one was living in the rental unit but they do not know for sure. The tenants claimed that they drove by and did not see any cars in the driveway; yet the purchaser contends that there were always cars in the driveway. The tenants maintained that the purchaser did renovations and the sold the rental unit, which the purchaser agreed he did. However, I find that the tenants provided insufficient evidence to show that the purchaser did not move into the rental unit for at least six months, after the effective date of the notice.

I find that the purchaser established that the rental unit was used for the purpose as stated on the 2 Month Notice. Therefore, the tenants' application for compensation of double the monthly rent of \$2,800.00, pursuant to section 51(2)(b) of the *Act*, is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, their application to recover the \$100.00 filing fee is dismissed without leave to reapply.

Section 82(3) of the *Act* states:

*Following the review, the director may confirm, vary or set aside the original decision or order.*

In accordance with section 82(3) of the *Act*, I set aside the original decision and original monetary order, both dated April 30, 2018. The original monetary order is hereby cancelled and of no force or effect.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

The original decision and original monetary order, both dated April 30, 2018, are set aside. The original monetary order is cancelled and of no force or effect.

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 27, 2019

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Residential Tenancy Branch