



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing.

At the commencement of the hearing the tenant submitted that the landlord's evidence was provided to the tenant last Saturday night, given to the tenant's current landlord. Then the landlord's agent emailed the evidence to the tenant. The tenant submits that the landlord has had more than enough time to provide evidence, and the landlord's evidence should not be considered.

The landlord's agent submitted that the landlord intended to attend this hearing but was unable to do so. If the landlord had been able to attend, the landlord would have given oral testimony and the evidence of the landlord would not be necessary. The landlord's agent further submitted that if the late evidence is accepted, it would not prejudice the tenant, and the evidentiary material was delivered to the tenant as soon as was possible. The landlord's agent is aware of the facts surrounding this dispute, and will testify on behalf of the landlord.

The tenant filed the Application for Dispute Resolution on June 27, 2019 and was given a hearing package to serve on the landlord on July 4, 2019. The tenant served the landlord and uploaded a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property on July 4, 2019. The landlord's evidentiary material was uploaded to the automated system of the Residential Tenancy Branch the day before this hearing. Given that more than 3 months have gone by since the landlord was made aware of this hearing, and given that the landlord would have given oral evidence only and the landlord's agent is

aware of the facts and can also give oral evidence, and considering that the tenant has opposed the landlord's late evidence, I declined to consider any of the landlord's evidentiary material.

The landlord's agent further submitted that an adjournment should be granted, upon the following principles:

- i) the likelihood that an adjournment would result in a resolution;
- ii) the need to adjourn;
- iii) the need to ensure a fair opportunity to be heard; and
- iv) any possible prejudice.

The landlord's agent submitted that without considering the landlord's evidence, it would not be possible to adjudicate in a fair manner, and that if the tenant had more time to consider the landlord's evidence, it is possible that the parties could settle without a hearing. Further, there is no intent nor any action or negligence on the landlord's part. The landlord wanted to attend but is unavailable and hired the agent to attend in his place. There would be no prejudice to the tenant if the hearing were adjourned, but would be a great prejudice to the landlord if an adjournment was not granted.

The tenant opposed an adjournment, and again I reiterate that the landlord has had ample opportunity to provide evidence. I find that an adjournment would be prejudicial to the tenant considering the application and notice of this hearing was served about 3 ½ months ago. The landlord's agent submitted that the landlord intended to give oral evidence instead of evidentiary material and the landlord's agent submitted that he knows the facts and can give the oral evidence, I cannot find that the landlord would be prejudiced if no adjournment was granted.

The adjournment application was denied. The tenant and the landlord's agent gave affirmed testimony and were given the opportunity to question each other and give submissions. No further issues with respect to service or delivery of documents or evidence were raised, and all evidence of the tenant has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically compensation for the landlord's failure to use the rental unit for the

purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

**The tenant** testified that this tenancy began on November 1, 2017 and ended on November 1, 2018. Rent in the amount of \$1,350.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant amounting to half of the rent, which was returned in full to the tenant, and no pet damage deposit was collected. A tenancy agreement exists, but a copy has not been provided for this hearing. The rental unit is a basement suite and the landlord resided in the upper level.

The tenant further testified that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice). A copy of the first 2 of 3 pages has been provided as evidence for this hearing. It is dated September 23, 2018 and contains an effective date of vacancy of November 30, 2018. The reason for issuing it states: 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 tenant did not dispute the Notice and moved out a month before its effective date.

Originally, specifically on September 7, 2018 the landlord told the tenant he wasn't going to renew the lease, which expired after the first year. Then in mid-September the landlord gave the tenant a written statement saying he was going to use the rental unit for personal use; his daughter was going to move in. The tenant found out that the last month's rent would be compensated, or not paid to the landlord, and the landlord agreed. On September 23, 2018 the landlord delivered the Notice. He planned to end the tenancy at the end of October, but the Residential Tenancy Branch advised that the effective date had to be November 30, 2018. He wanted the documentation to show the correct date, but said that the parties had a verbal agreement and that the tenancy would actually end October 31, 2018 and no rent would be paid for October.

The tenant spotted advertisements on Craigslist, which advertise the rental unit for rent at an increased monthly rent and copies have been provided for this hearing. The tenant testified that the dates on the advertisements are the dates that the tenant took the screen-shots of them. The first is dated December 28, 2018 and advertises the rental unit available immediately at \$1,600.00 per month. The second is dated January 30, 2019 and advertises the rental unit available immediately at \$1,550.00 per month. The photographs in the advertisements show no furniture so it's obviously vacant and

the landlord is trying to rent it again. The tenant also testified that although the photograph of the laundry room is small, it shows 2 "Smart Clean Balls," which have detergent inside and belong to the tenant. The tenant forgot about them until seeing them in the advertisements. The landlord didn't do any laundry in the basement, so obviously the photographs in the advertisements were taken after the tenant vacated.

**The landlord's agent** testified that shortly after the tenant vacated the rental unit the landlord's daughter moved in. She had planned to move in with her boyfriend, but he was reluctant to do so because he felt he would be better off living with his parents in order to save money. The landlord's daughter works part-time as a bookkeeper, and was paying the landlord \$1,350.00 per month, and would not be able to make those payments for the rental unit on her own. The intention was for the boyfriend to pay half the rent.

The landlord's daughter moved into the rental unit in December, 2018 after painting was done. They were taking their time and there was no urgency. Toward the end of the first month, she became concerned and made suggestions to the landlord to find another tenant. However, the landlord was eager to help his daughter, but at the same time agreed to advertise to see if he could secure another tenant, just in case his daughter could not continue to live in it. He dragged his feet and posted the first advertisement at an amount greater than its worth to give his daughter an opportunity to be able to stay. If it had remained vacant, the landlord would have advertised for a smaller amount, not greater, because he would be out more money if it wasn't rented. He was concerned when his daughter's boyfriend didn't move in, so rent was reduced in the second advertisement.

The advertisements were posted on Craigslist in December, 2018 and January, 2019, however no other tenants moved in.

In February, 2019 the boyfriend of the landlord's daughter did move in and they continue to live there. They pay \$1,350.00 per month to the landlord, but have no written tenancy agreement.

With respect to the 2 "Smart Clean Balls," the tenant ought to have enlarged the laundry room photograph for this hearing. At that point, the landlord could have disputed that by providing evidence that the items were there prior to the tenancy or provide a receipt. It is questionable why the tenant left the items there, and that the tenant didn't enquire to the landlord about the status of the rental unit, or get someone else to check to see if anyone actually lives there.

## Analysis

The *Residential Tenancy 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 have considered the testimony of the landlord's agent, and I find it very difficult to believe that after placing the first advertisement, available immediately, the landlord would not have rented for \$1,600.00 per month. Whether he did or didn't, I also consider the testimony of the landlord's agent that the landlord's daughter was not in a hurry and there was no urgency for her to move in. I find that to be contrary to the undisputed testimony of the tenant that the landlord agreed to have the Notice effective November 30 on paper but to have the tenant move out by October 31. If there was no urgency, the landlord would have been content with the November 30, 2018 end of tenancy as required by law.

The landlord advertised the rental unit for rent in December, 2018 available immediately at a higher rate than the tenant was paying and then advertised it again in January, 2019 for \$50.00 per month less than the first advertisement. I accept the testimony of the tenant that the photographs in the advertisements were taken after the tenant vacated. I find that the tenant has established that the landlord did not use the rental unit for the purpose stated in the Two Month Notice to End Tenancy for Landlord's Use of Property and the landlord must compensate the tenant the equivalent of 12 months rent, which in this case is \$16,200.00.

Since the tenant has been successful with the application the tenant is also entitled to recover from the landlord the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$16,300.00.

This order is final and binding and may be enforced.

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: October 15, 2019

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Residential Tenancy Branch