



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$16,605.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their \$100.00 Application filing fee.

The Tenant, C.V., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 21, 2016, with a monthly rent of \$1,300.00 that increased to \$1,385.75 by the end of the tenancy. The rent was due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$650.00, and a pet damage deposit of \$650.00. The Parties agreed that the rental unit is a mobile home that the Tenants rented from the Landlord.

The Parties agreed that the tenancy ended, because the Landlord served the Tenants with a Two Month Notice to End the Tenancy for the Landlord's Use dated March 12, 2019 ("Two Month Notice"). The Parties agreed that the Two Month Notice was signed, dated, and served on the Tenants in person by the Landlord on March 12, 2019, and had an effective vacancy date of May 31, 2019. The ground for the eviction listed on the Two Month Notice was that the rental unit will be occupied by the Landlord or a member of the Landlord's close family.

The Tenants applied for compensation pursuant to section 51 of the Act, because, as the Tenant testified, the Landlord has not fulfilled the stated purpose on the Two Month Notice. Section 51(2) states that a landlord must pay the tenant:

...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.

The Tenant said that the Landlord told them that his son was going to move into the rental unit, but she said: "He's still in [another city] after he was supposed to move in on June 1." The Tenant said that having to move out "...has put us out hugely with extra cost." The Landlord said:

At the end of February [2019], our son was home for a visit. He was living in [another city] due to a confidential health issue. During the visit, we discussed him purchasing the mobile to move back to [Landlord's city]. He did end up purchasing the mobile on April 20, 2019. We gave [the Tenants] notice, and on March 18 they found a place and said they would be leaving at the end of April. I gave them a free month's rent of April and they vacated on April 25.

[The Landlord's son] started dating a lady in [his city], due to that, and [his health], it was decided that he should not move home yet. He had to stay in [his city], but we already gave notice.

The mobile was occupied by a person. Now [Landlord's son] has given his notice, and once he gets approval from people we can't mention in [his city], he will be allowed to move back. The mobile belongs to him; it's his to deal with. The delay was due to his health.

The Tenant said she believes someone else is living in the rental unit, other than the Landlord or a close member of his family. The Landlord said that his son was going to move in with a roommate, but that his health and other circumstances prevented that from happening immediately. The Landlord said that his son's friend had planned to move in and needed a place to live, so he moved in to the rental unit and pays rent to the son. The Landlord said that his son: "...has moved back home; he's paying rent with another person, because he brought his girlfriend and her daughter. He has to honour the agreement until the lease has expired and then he can move back in."

The Tenant said that the Landlord: "...never said that we could stay longer. It's a beautiful place, but there's a part of me that feels that he has not been acting in good faith."

The Landlord said he wanted to speak privately, excluding the Tenant from hearing his comments, so that he could explain the confidential circumstances surrounding his son's delayed stay in the other city. However, I found that it would be administratively

unfair and a breach of natural justice to make a decision based on evidence on which the Tenants did not have an opportunity to comment.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the Landlord took steps to have his son move into the rental unit, which was the stated purpose to end the tenancy. However, the Landlord and his son deviated from the stated purpose of the Two Month Notice in that the son purchased the residential property, but did not move in; therefore, I find the Landlord indicated the wrong grounds for the eviction on the Two Month Notice, contrary to section 52 of the Act.

Furthermore, the rental unit was not used for the stated purpose within a reasonable time or for at least six months. The evidence was that the Landlord did not use the rental unit for the stated purpose at all; rather, the purchaser rented it to someone else.

Section 51(3) of the Act states:

(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.

As explained in Policy Guideline 50:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section

49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

The effective vacancy date on the Two Month Notice was May 31, 2019, and I find that within six months, by November 30, 2019, the stated purpose for the Two Month Notice had not been accomplished.

The Landlord said that there were extenuating circumstances here; however, he was not willing to explain those circumstances to the Tenants, other than to say that his son had health issues that required him to remain in another city for an extended period of time. In addition, the Landlord said that the son had met a woman in this other city, which contributed to the son not wanting to move to the rental unit.

Based on the evidence before me, overall, I find that the Tenants are successful in their Application, because I find the Landlord breached section 49 and 51 of the Act, by not taking steps within a reasonable period after the effective date of the Two Month Notice to accomplish the stated purpose for ending the tenancy.

I, therefore, award the Tenants twelve times the rent of \$1,385.75 or \$16,629.00. Given their success, I also award the Tenants recovery of their \$100.00 Application filing fee. Accordingly, I award the Tenants with a Monetary Order of **\$16,729.00**, pursuant to section 51(2) of the Act.

### Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of \$16,629.00. The Tenants are also awarded recovery of their \$100.00 filing fee for this Application from the Landlord. I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$16,729.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 5, 2019

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Residential Tenancy Branch