



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 7, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Landlords and the Tenants all attended the hearing. The Landlord confirmed receipt of the Tenants' application and evidence. I find this evidence was served within the acceptable time frame under the Rules of Procedure. The Tenants confirmed receipt of the Landlords' evidence. I find both parties sufficiently served each other with their evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence that was submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

### Background and Evidence

Both parties provided a substantial amount evidence and testimony. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize

and speak to points which are essential in order to determine whether or not the Tenants are entitled to the compensation they have requested. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the Tenants were paying monthly rent in the amount of \$1,850.00 at the end of the tenancy. The tenancy agreement provided into evidence shows that the tenancy began in 2002. The Tenants moved out at the beginning of September 2017.

The Tenants are seeking \$14,538.32 (as per their application), but later refined this amount to \$15,248.04 when they submitted their worksheet. The Tenants stated that this amount is comprised of 2 months rent in compensation, pursuant to section 51 of the Act (because the Landlord did not demolish the house as they said they would in their email), as well as storage costs, moving costs, and the increase in rent they have paid since having to move to a different house. The Tenants feel this amount is warranted because of the email the Landlords sent on July 31, 2017, which caused them to have to move and incur all of the above expenses.

The Tenants pointed to an email from the Landlords from July 31, 2017, to show they were forced to move, and stated that this is equivalent to getting a 2-Month Notice to End Tenancy for Landlords Use on the approved form. Generally, the email refers to a previous conversation between the parties, and lays out how and when the tenancy was set to end. The Tenants stated that had he known what he knows now, they would have demanded a proper notice on the approved form.

The Landlords explained that they have always been accommodating and generous with the Tenants over the years. The Landlords stated that most of their communication was verbally, as the they lived next door, and many of the repairs, maintenance requests, and rent increases were all agreed to, verbally, without issue. The Landlords explained that in June of 2016, the Tenants expressed an interest in moving by the following summer, and the Landlords decided to use that opportunity, after they moved out, to either demolish or renovate the house. The Landlords stated that it was their intention through all these years to eventually move into the property and either rebuild or renovate.

The Landlords stated that there were many conversations that were had from June 2016, until the following summer, when the Tenants had stated they were going to move out. As many of them were verbal, the Landlord did not have many of these on the record. The Landlord acknowledged sending the email on July 31, 2017, outlining the end of the tenancy, but stated it was only ever triggered because the Tenants had given them verbal notice that they would be leaving in the summer of 2017 and had repeatedly told them of their plans to move. The Landlords confirmed that they never issued a formal Notice to End Tenancy because it was the Tenants who initiated this series of events. The Landlords stated that the house sat empty for at least a year while they figured out what to do with it, as they hadn't planned on utilizing the

house for their own purposes for a few more years. However, they stated that their eventual plans with the house were expedited by the Tenants saying they were going to move out.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 2 month's compensation, pursuant to section 51 of the Act, (2 x \$1,850.00) because the Landlords did not demolish the house as was explained to them prior to moving out.

After reviewing this application, I find the Tenants are ineligible for compensation under section 51 of the Act, based on the Notice they state they were issued under section 49 of the Act. In making this determination, I considered and take note of the fact that the Landlord did not issue a valid and proper 2-Month Notice to End Tenancy for Landlord's use of the property under section 49 of the Act. It appears the parties have a history of communicating informally, by both email and verbal conversation, as they had been neighbors for many years. I turn to the following portion of the Act:

#### **Landlord's notice: landlord's use of property**

**49** (7) **A notice under this section must comply with section 52** *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Next, I turn to the following portion of the Act:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the evidence before me, and I find the Landlord never issued a valid 2-Month Notice to End Tenancy under section 49 of the Act, and the Tenants were not legally required to vacate the rental unit, based on the informal communications they had with the Landlords. A valid 2-Month Notice must be issued under section 49 of the Act in order for compensation under section 51 to be due. The email from the Landlords to the Tenants is not signed, and not in the approved form. The email provided shows that there were conversations and discussions surrounding the end of the tenancy, not just a stand-alone email, and I do not find the email is sufficiently clear and compliant with the Act as to find it meets the form and content requirements.

The Tenants were not legally required to move, based on this email, and if they wished to continue the tenancy, they should have filed an application for dispute resolution at that time. I find they are not entitled to any of the expenses they incurred (moving, storage, increased rent at new house) after moving out.

Given this, I find the Tenants are not entitled to any of the amounts they have claimed. I dismiss the Tenants' application, in full.

As the Tenants were unsuccessful with this application, I decline to grant the recovery of the filing fee.

### Conclusion

The Tenants application is dismissed, in full, without leave to reapply.

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: January 07, 2020

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Residential Tenancy Branch