



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FFT

### Introduction

On January 3, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee.

The Tenant and Landlords were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Tenant and Landlords testified that the tenancy started on January 1, 2015 as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,200.00 was due to be paid to the Landlords by the first day of each month. The Tenant paid a security deposit of \$600.00 to the original Landlord. The Tenant provided a copy of the tenancy agreement.

The Landlords inherited existing tenancy agreements for two tenanted suites when the Landlords purchased the residential property and took possession on November 1, 2018.

The Tenant testified that he moved out of the rental unit on March 31, 2019 after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 15, 2019 from the Landlords. The Tenant provided a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 15, 2020 ("the Two Month Notice").

The reason for ending the tenancy within the Two Month Notice is:

*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 testified that the Landlords did not act in good faith and are not using the rental unit for the purpose stated within the Two Month Notice. The Tenant submitted that the Landlord intended to rent out the unit for more money. The Tenant testified that Landlord also issued a Two Month Notice to the Tenant living in the two-bedroom unit located next to his.

The Tenant submitted that the Landlords offered to rent the unit back to him at a higher monthly rent. The Tenant testified that the Landlords are currently using the rental unit as an Airbnb.

The Tenant provided a copy of an email he sent to the Landlord on February 6, 2019 where he asks the Landlord what she has in mind for renting out the one-bedroom suite and what the Landlord would be looking for in rent and any other terms that might be changed. The Landlord responded on February 7, 2019 stating "*if you would like to stay, we will do \$1450 / month including utilities/ cable/ internet. The Landlords response includes ...Again, sorry about this, it was always our intention to reclaim the rooms downstairs for our use.*"

The Tenant provided a copy of advertisements for the rental unit that were placed on an Airbnb website. The advertisement indicates the Landlord is seeking \$118 per night. One advertisement indicates the rental unit is available for \$2,226.00 per month.

The Tenant is seeking compensation in the amount of \$14,400.00 which is twelve months of rent payable under the tenancy agreement.

In reply, the Landlord provided affirmed testimony that there is not a lot to dispute in what was stated by the Tenant.

The Landlord confirmed that they issued the Two Month Notice to the Tenant.

The Landlords testified that after a property use inspector inspected the property the City required the Landlords to change the use of the units and the tenants rental unit then became part of their legal dwelling.

The Landlord testified that they took out a building permit and legalized one of the rental units and converted the other unit (the Tenant's unit) for their use, which they have used as a 1-bedroom short term rental. The Landlord testified that they are licensed for short term rentals by the City.

The Landlords written submission includes: *"It was always our intent to take back the front bedroom of the unit on the lower west side of the house to convert this to our home office. At the time that we served notice, we also told the tenant of our plans and said that we would also give him the option to rent the newly converted 1-bedroom suite should he so desire. The tenant inquired further about this in an email on February 6th, 2019 to which we responded. No other inquiries were made by the Tenant after this email."*

The Landlord provided a copy of letter from the City dated March 6, 2019 which notes the addition of two unauthorized dwelling units, in the east and west portions of the 1<sup>st</sup> storey, without permit in contravention of bylaws. The letter directs the Landlord to retain one suite and remove the second unauthorized dwelling or restore the building to one family dwelling within 60 days.

The Landlord provided a copy of a building permit issued on April 8, 2019 for a one family dwelling with a secondary suite. The permit indicates the Landlord is making interior alterations to remove the second unauthorized dwelling unit on the east side of the building.

The Landlord provided a copy of a document from the City which indicates the building permit was completed on June 3, 2019.

The Landlord provided a copy of a short-term rental licence issued by the City on May 26, 2019.

The Landlord testified that they began advertising the 1-bedroom rental unit on an Airbnb website in June 2019 and had their first paying short term tenant in June 2019.

The Tenant responded to the Landlord's testimony by stating that the fact that the City intervened after the Two Month Notice was issued is irrelevant. The Tenant submitted that the Landlord wrongfully ended his tenancy for monetary gain and did not use the unit for the reason stated in the Two Month Notice.

### Analysis

Section 51 (2) of the Act provides:

*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.*** [my emphasis]

*(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.*

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a Landlord to pay compensation to a Tenant when a Landlord ends a tenancy for Landlord's use of property. The Guideline provides that a Landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least six months.

With respect to extenuating circumstances, the Guideline provides the following: An arbitrator may excuse a Landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a Landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

Based on all of the above, the evidence and testimony from the Tenant and Landlords, and on a balance of probabilities, I find as follows:

I find that at the time the Two Month Notice was issued, the Landlord had the intent to change the Tenant's rental unit from a two-bedroom suite into a one-bedroom suite by taking back the front bedroom of the unit for the Landlord to use as a home office. The Landlord had the intent to rent out the newly converted 1-bedroom suite at a higher monthly rent than what the Tenant was paying for the two-bedroom unit under the original tenancy agreement.

I find that the Landlord did not have the intent to occupy the entire two-bedroom rental unit as indicated in the Two Month Notice.

The Landlords took the position that if they claim use over a portion of the rental unit, the Landlord can end the existing tenancy by issuing a Two Month Notice and can consider the rental unit to be a newly converted unit that can be re-rented at a higher monthly rent. I find that the legislation under section 49 of the Act does not permit the Landlord to end the tenancy for this reason.

The Landlords inherited the tenancy with its existing terms and conditions. The Landlords cannot avoid their obligations under that tenancy agreement and the Act, including rent increase provisions contained under section 43 of the Act. I find that the Landlords intended to rent out the rental unit at a higher monthly rent. The Landlords offered that the Tenant could remain in the unit for \$1,450.00 per month which is a 20% rent increase for a smaller unit.

I find that the Tenant accepted the Two Month Notice and moved out of the rental unit on March 31, 2019. The Landlord advertised the rental unit on Airbnb in June 2019 and received rental income for the unit in June 2019.

I note that the Landlord provided testimony that when the City required the Landlords to change the use of the units, the Tenants rental unit then became part of their legal dwelling. I find that having the rental unit become part of the Landlords' dwelling is what the legislation intended when a Two Month Notice is issued for the reason that the Landlord intends to occupy the rental unit. I find that ending the tenancy by issuing a Two Month Notice for this reason does not legally entitle to the Landlords to re-rent the unit out until the expiration of a six-month period of time, even if the rental and compensation comes from short term AirBnb rentals.

I find the Landlords ended the tenancy improperly and failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. Pursuant to section 51(2) of the Act, the Landlords must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and the Policy Guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances present making it unjust for the Landlord to have to pay the compensation.

While I acknowledge that the Landlords had to make changes to their intended use of the Tenant's rental unit upon direction from the City on March 6, 2019; I find that this is not an extenuating circumstance because the Landlord had already issued the Two Month Notice with the intention to end the tenancy and rent out the suite at a higher monthly rent. The Landlords action to end the tenancy and immediately offer to re-rent the suite as a one-bedroom unit was a breach of the Act, and following the City's involvement, the Landlords decision to rent out the unit as a short-term rental in June 2019 was also a breach of the Act.

I find that the Landlords owes the Tenant \$14,400.00 which is the equivalent of 12 times the \$1,200.00 monthly rent payable under the tenancy agreement.

### Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with his application. I order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$14,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

The Landlords issued a Two Month Notice to the Tenant who accepted the Notice and moved out of the rental unit on March 31, 2019.

The Landlords did not use the rental unit for the purpose stated within the Two Month Notice for a six-month duration. The Landlord received rental income from renting the unit as a short-term Airbnb rental in June 2019. The Landlords must pay the Tenant the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$14,500.00 for the Landlord's breach of section 51 of the Act, and the cost of the filing fee.

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: June 16, 2020

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Residential Tenancy Branch