



# 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, made on January 14, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an or granting the return of the filing fee

The Tenant K.K., the Landlord, and the Landlord's Counsel M.L. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of the respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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 relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 2, 2011. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,730.45 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$300.00. The parties agreed that both deposits have since been returned to the Tenants. The tenancy ended on August 31, 2019.

The parties testified and agreed that the Landlord served the Tenants with the Two Month Notice dated July 12, 2019 (the "Two Month Notice") with an effective vacancy date of September 30, 2019. The Landlord's reason for ending the tenancy on 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 souse)."*

The parties testified and agreed that after receiving the Two Month Notice, the Tenants served the Landlord with their notice to end tenancy as of August 31, 2019. The parties agreed that the Tenants vacated the rental unit on August 31, 2019 in compliance with the Two Month Notice.

The Tenant stated that the Landlord failed to compensate the Tenants an amount equal to one month's rent payable under her tenancy agreement as indicated on the Two Month Notice. In response, the Landlord's counsel stated that the Landlord agrees to compensate the Tenant in the amount of \$1,730.56 which had been offered to the Tenants in April 2020, however, the Tenants did not respond the Landlord's offer.

The Tenants are also seeking compensation in relation to the Landlord not following through on the intended purpose of the Two Month Notice. The Tenant stated that as of January 2020, the rental property appears to be vacant. The Tenant stated that he spoke to a neighbour who informed the Tenants that the Landlord is seen taking out the garbage, leaving the light on in the rental property and that her vehicle is parked in the driveway periodically. The Tenant stated that he suspected the Landlord would re-rent the rental property for more rent.

The Landlord's counsel responded by stating that the Landlord prepared a sworn affidavit which states that the Landlord served the Two Month Notice to the Tenants as

she intended to occupy the rental unit as she wanted to spend some time apart from her boyfriend. The Tenant also indicated in her affidavit that she had obtained a Health Canada Certificate to produce medical marijuana at the rental property for health reasons. The Landlord provided a copy of her sworn affidavit as well as the Health Canada Health Certificate in support.

The Landlord stated that she moved in to the rental property in early October 2019, shortly after the effective date of the Two Month Notice. The Landlord stated she stayed at the rental property about 3 to 4 times per week. Then later in December 2019, the Landlord stated that she started to reside in the rental property full time and continues to reside in the rental property full time ever since. The Landlord provided a witness statement from a neighbour, her home insurance policy, a copy of utility bills which post date the end of the tenancy which are in the Landlord's name in support.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenants are claiming \$1,730.56 in relation to compensation based on the Two Month Notice that the Landlord served the Tenants.

Section 51(1) of the Act states;

*A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

During the hearing, the Landlord's counsel agreed that the Tenant is entitled to the claimed amount. The Landlord's counsel stated that the Landlord had offered to pay the Tenants in April 2020, however, the Tenants did not respond.

I accept that the parties agreed during the hearing that the Tenants are entitled to monetary compensation in the amount of \$1,730.56. As such, I find the Tenants are granted a monetary order in the amount of \$1,730.56.

The Tenants are claiming compensation equivalent to twelve months of rent as the Landlord did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

I accept that the Landlord served the Tenant with a Two Month Notice dated July 12, 2019, with an effective date of September 30, 2019. I accept that after receiving the Two Month Notice, the Tenants provided the Landlord with their notice to end tenancy indicating that they were seeking to end the tenancy early on August 31, 2019.

According to Section 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.**

(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.

In this case, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord has not taken steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or that the rental unit has not been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In contrast, the Landlord provided sufficient evidence to demonstrate that they occupied the rental unit beginning in early October 2019 and continue to occupy the rental unit to this day, which was the intended purpose of the Two Month Notice.

Based on the above I find that the Tenants are not entitled to compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenants were partially successful in their application, I find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$1,830.56.

### Conclusion

The Landlord has not compensated the Tenants in accordance with Section 51(1) of the *Act*. I grant the Tenants a Monetary Order in the amount of \$1,830.56. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 09, 2020

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Residential Tenancy Branch