



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2481 176 Street Holdings  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenants and the owner of the named company landlord (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The landlord confirmed receiving the tenants' evidence and that he had not filed evidence prior to the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

I note that the Notice and the written tenancy agreement list only YS as a tenant.

In response to my inquiry, tenant YS explained the reason that NH is listed as a co-applicant/tenant is that he moved into the rental unit and was living there as a tenant.

I therefore included the name of NH as a tenant, for the purposes of this Decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and recovery of the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on November 1, 2018 and ended on December 20, 2019. The monthly rent at the beginning and end of the tenancy was \$1,000. Filed into evidence was a copy of the written tenancy agreement.

The tenants said that they vacated the rental unit on or about December 20, 2019, in response to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was issued by the landlord, was dated September 25, 2019, signed by an agent for the named company landlord, served to the tenant that date, and listed an effective move-out date of November 20, 2019. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenants submitted further that they chose to accept that the tenancy was ending as they vacated pursuant to the Notice. The tenant submitted that they vacated the rental unit in December 2019, as they did not receive the Notice until October 4, 2019, and were informed that the effective date corrected to December 31, 2019.

In support of their application, the tenant said they were informed in a voicemail that the landlord intended on using the rental unit as an office space; however, the landlord is

not using the rental unit as an office space, according to the tenants, and there was no evidence that the landlord has moved into the rental unit. When asked to explain, the tenant said they have driven by the former rental unit and that only a BBQ grill and lawn chairs were out in front. The tenants asserted that there did not seem to be any other signs of the landlord living there or using it as office space.

Filed into evidence is a recording of that voice mail, which was left by the landlord's employee, MD.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$12,000.

*Landlords' response-*

The landlord/owner said that there is a lawn chair and a BBQ grill at the former rental unit, and he goes there sometimes to visit with friends, using the grill and chairs.

The landlord submitted that he is using it for his own residential purposes, when he goes there to socialize with friends.

In response to my inquiry, the landlord confirmed that the former rental unit is not his main home, but does use the former rental unit for his own purposes.

The landlord asserted that the building is an accessory building and he is not allowed to rent it out.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In this instance, the tenants are required to prove their claim, on a balance of probabilities.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

Therefore, the landlord or close family member must occupy the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the 2 Month Notice that was served upon the tenant.

Section 51(2) provides that if 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 if 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 is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Residential Tenancy Branch (RTB) Policy Guideline 2A states that the implication of the word "occupy" means to "occupy for a residential purpose". This Policy Guideline goes on to explain that a landlord can end the tenancy if they, or close family member intend in good faith to use the rental unit as living accommodation or as part of their living space.

Living space is in a case of a landlord renting out a rental suite in their house under a tenancy agreement, for instance, a basement suite, and they intend to reclaim it as a part of their living accommodation. That is not the case here.

Having reviewed and considered the parties' respective oral, documentary and digital evidence, I find the tenants have met their burden of proof.

The landlord confirmed that he does not live in the rental unit and has only ever used it for socializing with friends. I therefore find the landlord is not using the rental unit as a living accommodation and therefore, is not and has not used it for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, November 30, 2019.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary award of \$12,100, the equivalent of monthly rent of \$1000 for 12 months, or \$12,000, and the cost of the filing fee of \$100.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$12,100.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$12,000 and recovery of the filing fee is granted. They have been granted a monetary order for \$12,100.

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: July 14, 2020

---

Residential Tenancy Branch