



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The Tenant states that the tenancy under written agreement started on April 1, 2017 and ended on March 31, 2020. The Landlord states that it is unaware when the tenancy started. The Parties agree that rent of \$1,950.00 was payable on the first day of each month and that the security deposit has been dealt with. The Tenant states that its previous landlord gave the Tenant a two month notice to end tenancy for landlord's use on January 22, 2020 with an effective date of March 31, 2020 (the “Notice”). The Tenant states that the reason stated on the Notice is that the purchaser intends to occupy the unit. The Landlord confirms it was the purchaser and states that it did

provide the previous landlord with a letter asking that the tenancy be ended as they intended to occupy the unit.

The Tenant states that on April 8, 2020 the Landlord advertised the unit for rent. The Tenant provides a copy of the advertisement. The Tenant points to photos in that advertisement as showing the Tenant's broom on the deck and a missing closet door. The Tenant states that the broom was left at the end of the tenancy and that the door had been removed during the tenancy. The Tenant states that these photos could therefore not have been taken until after the tenancy ended and that as only the Landlord had keys to the unit the Landlord could have only been the one responsible for the photos being taken. The Tenant states that it sent a request to the advertisement with a response that an appointment could be set up to view the unit. The Tenant states that after it served its application to the Landlord on April 9, 2020 the advertisement was removed. The Tenant states that it contacted the realtor for the unit who informed the Tenant that the realtor, being informed of the advertisement by the Tenant, contacted the Landlord about the advertisement and was informed that the Landlord did not place the advertisement and believed it was a scam advertisement. The Tenant states that it has no other evidence of who is living in the unit after the first 10 days of April 2020.

The Landlord states that they did not place the advertisement and that they moved into the unit with the move started on April 5, 2020. The Landlord submits that as a first time home buyer they are required to reside in the unit. The Landlord states that it's driver's licence address was changed, and the hydro was connected to the unit in the beginning of April 2020. The Landlord states that its phone bill address was changed before April 2020. The Landlord provides copies of its home buyer documents, along with copies of its licence and hydro and phone bill. The Landlord states that it also paid the strata fees for April, May, June and July 2020. The Landlord states that they have no idea who would have taken the photos of the unit and that some photos in the advertisement are

not of the unit. The Landlord states that it did not investigate with the advertiser about a suspected scam.

The Tenant states that one of the photos from the advertisement shows the reflection of a “young lady” taking the photo. The Tenant states that it has never seen the purchasers and therefore does not know what they look like. The Tenant states that all the photos of the interior of the unit are from that unit. The Landlord states that it cannot see any image and that the female landlord is not a young person being 47 years old. The Landlord states that the house they were previously living in is still being rented by the Landlord as they are running a daycare in the basement of the house and their sons are occupying the rest of the house.

### Analysis

Section 51(2) of the Act provides that 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.

There is no requirement of a good faith intention to occupy the unit under this section of the Act. The only requirement is that the unit be occupied by the Landlord as stated in the Notice. Although the advertising evidence suggests that there may have been an intention not to occupy the unit it is not evidence that the unit was not occupied or that steps were not taken to occupy the unit. Given the Landlord's undisputed evidence of having moved into the unit with a start date of 5 days after the effective date of the Notice I find on a balance of probabilities that steps were taken to accomplish their move into the unit within a reasonable period. The Tenants have therefore not

substantiated an entitlement to the compensation claimed. As the Tenants have not been successful with this claim I find that the Tenants are also not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 19, 2020

---

Residential Tenancy Branch