



# 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 (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for a monetary order in the amount of \$17,920.00, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants write in their application that they are seeking 12 months of rent in the amount of \$17,820.00 due to the landlords failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2018 (2 Month Notice). The tenants are also seeking the \$100.00 filing fee.

The tenants and landlord RC (landlord) attended the teleconference hearing, were affirmed and the hearing process was explained. The parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me. I have reviewed all testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision.

As landlord CK did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 25, 2020 (Notice of Hearing), application and documentary evidence was considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on landlord CK by registered mail to the mailing address for CK that the tenants were not advised had changed since the tenancy ended on June 1, 2018. The tenants provided a registered mail tracking number in evidence, which has been included on the style of cause of ease of reference. According to the Canada Post registered mail tracking website, the

registered mail package was delivered on June 2, 2020. Given the above, I find that both landlords were sufficiently served under the Act.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision will be emailed to both parties.

### Issues to be Decided

- Are the tenants entitled to a monetary order for compensation under the Act and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on July 1, 2012. There is no dispute that the tenancy ended based on the landlords serving the tenants the 2 Month Notice dated March 31, 2018, with an effective vacancy date of June 1, 2018. The parties agreed that the tenants did not dispute the 2 Month Notice and vacated the rental unit as of June 1, 2018. The tenants filed the application before me on May 25, 2020. The tenants explained that the application was filed almost two years later as the tenants were not aware of their rights until May 2020.

The reason stated on the 2 Month Notice is:

“The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

The parties agreed that by the end of the tenancy, monthly rent was \$1,485.00 per month. The tenants write in their application:

We were issued a 60-day notice of eviction so that renovations and repairs could be made to the rental unit that would require the unit to be vacant (replacing all windows, and siding, and repairing water damage to the kitchen). We later learned that those renovations were not performed and that the house was instead sold almost immediately. We are claiming for 12 months of rent at \$1485 per month.

The tenants allege that the landlords listed the rental unit for sale in July 2018, which the landlord disputed. The landlord testified that they listed the rental property for sale in November 2018 after a second quote to renovate the rental unit was significantly more expensive at \$32,707.50 dated June 15, 2018 versus the original quote of \$11,130.00 dated April 1, 2018. Both quotes were reviewed during the hearing. The landlord testified that the landlords' plans changed once a contractor advised them that there were significantly more damage to address, which was not caused by the tenants, in the attic and kitchen. The landlord clarified that while it was the intention of the landlords to do the intended renovations listed on the first quote dated April 1, 2018, the landlords decided to list the property for sale once the second quote was received in the middle of June 2018. The landlord admitted that the renovations as planned were not completed and that only some minor interior renovations worth a few thousand dollars took place before the rental property was sold by the end of 2018.

The parties discussed the landlords offering the tenants the ability to stay longer, which I find is moot, as the 2 Month Notice was served by the landlords and was not disputed by the tenants, and of which resulting in the tenancy ending as of June 1, 2018.

### Analysis

Based on the documentary evidence of the parties and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I must determine what law applied when the 2 Month Notice was served on March 31, 2018, and section 51(2) of the Act applied and stated:

51(2) In addition to the amount payable under subsection (1), if  
(a) **steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or**  
(b) **the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**  
**the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.**

[Emphasis added]

As of May 17, 2018, the Act changed and required 12 months compensation and added the following section:

(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.

[Emphasis added]

As the 2 Month Notice was issued on March 31, 2018, I find the law that applied is the law as it read as of March 31, 2018, and **not** as of the effective date of the 2 Month Notice, which was June 1, 2018. Therefore, I find that the 12-month compensation provision does not apply to this matter and that instead, compensation of 2 months applies to the 2 Month Notice as of March 31, 2018. In addition, and consistent with my finding above, I also find that the extenuating circumstances provision, which I have underlined above, also did not apply to the 2 Month Notice as that provision did not come into force until May 17, 2018 by Royal Assent. It is for this reason, that the landlords' explanation for changing their minds due to the higher quotes dated June 15, 2018 is not relevant as the only relevant issue is whether or not the landlords complied with the original reason as stated on the 2 Month Notice.

Therefore, based on the landlord's testimony that the renovations that required vacant possession of the rental unit did not take place due to the high cost outlined in the second quote, which resulted in the landlords listing the rental property up for sale in November 2018, I find the landlords failed to use the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the June 1, 2018 effective date of the notice. November 2018 is only five months after the 2 Month Notice effective date had passed, and by listing the property for sale and selling the property by end of 2018, I find the tenants have met the burden of proof for compensation of the equivalent of 2 months' rent. In addition, I find the minor interior renovations described by the landlord failed to meet the reason stated in the 2 Month Notice requiring vacant possession.

Consequently, I grant the tenants **\$2,970.00** in compensation from the landlords, comprised of two times the monthly rent of \$1,485.00 pursuant to section 51(2) of the Act, as the Act read as of March 31, 2018.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Based on the above, I find the tenants have established a total monetary claim of **\$3,070.00** comprised of \$2,970.00 for the 2 times the monthly rent for the landlords failing to comply with the reason stated on the 2 Month Notice, plus the \$100.00 filing fee.

I dismiss any higher amount claimed by the tenants due to insufficient evidence, without leave to reapply, as the 12-month compensation was not in effect as of March 31, 2018 when the 2 Month Notice was issued.

### Conclusion

The tenants' application is partially successful.

The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$3,070.00 as indicated above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlords.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 29, 2020

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Residential Tenancy Branch