



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL / MNDCT, FFT

### Introduction

On July 10, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order, pursuant to section 51(2) of the Act.

On July 28, 2020, the Landlords submitted an Application for Dispute Resolution under the Act. The Landlords requested a Monetary Order to recover unpaid rent, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlords, a representative from the Landlord’s Management company and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issues to be Decided

Should the Tenants receive a Monetary Order for compensation, pursuant to section 51(2) of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Should the Landlords receive a Monetary Order for unpaid rent, pursuant to section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2019 with an end date of April 30, 2020. The rent was \$2,600.00 and due on the first of each month. The Landlord collected and has since returned a security deposit and pet damage deposit, both in the amount of \$1,300.00.

The Landlords initially submitted that the Tenants left the rental unit one month early and that the Landlords' son moved into the rental unit on April 7, 2020. The Landlords submitted copies of utility statements for April 2020 and stated that the son stayed in the rental unit on and off for six weeks. The Landlords listed the residential property for sale, and it sold five months later. The Landlord claimed a loss of one month's rent, for April 2020, in the amount of \$2,600.00.

The Tenants submitted that they had been looking for a multiple year tenancy agreement and that they signed a one-year fixed term to continue on month-to-month for this reason.

The Tenants testified that they received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") via email on February 19, 2020, with a move-out date for April 30, 2020. The Notice indicated that the Landlords' child would be occupying the rental unit.

The Landlords submitted a copy of email correspondence with the Tenants that indicated the Landlords had sent the Tenants the Two Month Notice on February 19, 2020 at 3:48 PM. The Landlords stated that they immediately realized they had made a mistake and on February 19, 2020 at 4:11 PM, sent an email to the Tenants, at the same email address, that stated:

"Please disregard previous email as you have already signed a Mutual Agreement to End a Tenancy."

The Landlord submitted a copy of the Tenancy Agreement and a copy of a Mutual Agreement to End a Tenancy, dated March 19, 2019, that was signed by the Landlord's Agent and the Tenants and indicated that the Tenants agreed to vacate the rental on April 30, 2020.

When questioned about the Landlords' cancellation of the Two Month Notice, the Tenants stated they did not see that email. The Tenants acknowledged that they did receive the Two Month Notice and corresponded with the Landlord after February 19, 2020 via the same email address, but did not see the email that said to disregard the Two Month Notice.

The Tenants submitted a copy of the letter they sent to the Landlord, dated February 29, 2020, that acknowledged they had been served a Two Month Notice to End Tenancy and advised the Landlord that instead of the one month's compensation, that the Tenant's would be vacating the rental unit on March 31, 2020.

The Tenants submitted that the Landlord agreed to this proposal when the Landlord confirmed via email on March 3, 2020 with "helpful information regarding your move out inspection".

The Tenants stated that the move-out inspection was completed on March 31, 2020, and the Landlords returned the Tenants' security deposit and pet damage deposit.

The Tenants claim that the Landlord issued the Two Month Notice in bad faith and did not use the rental unit for the stated purpose for at least 6 months' duration after the effective date of the Two Month Notice. The Tenants are requesting compensation of an amount equivalent of 12 times the monthly rent payable under the Tenancy Agreement. The Tenants are also claiming an extra month's rent in compensation for having to move out early, based on the Landlords' service of the Two Month Notice.

When questioned about signing the Mutual Agreement to move out of the rental unit, the Tenants stated they didn't think about it when they signed it.

The Landlords stated that the Two Month Notice was not valid as they sent an email to immediately cancel the Notice and secondly, that an email of such a Notice was not an approved way of serving a Two Month Notice.

### Analysis

The Landlord has made a claim that they lost one month's rent for April 2020. When I consider the validity of this claim, I review the following points:

- The Landlords' response to the Tenants' letter of February 29, 2020, consenting to conduct the move out inspection, as proposed by the Tenants, on March 31, 2020;
- That there has been no evidence presented to me that the Landlords advised or required the Tenants to stay or pay for April 2020; and,
- The Landlords' testimony that their son moved into the rental unit for most of April 2020.

Based on the evidence before me, I find that the Landlords have failed to provide sufficient evidence that a loss existed and that it was as a result of the Tenants' violation of the Act or the Tenancy Agreement. As a result, I dismiss the Landlords' Application for Dispute Resolution without leave to reapply.

The Tenants' claim centers on section 51(2) of the Act which speaks to compensation for tenants who receive a notice to end tenancy under section 49 and where the landlord fails to accomplish the stated purpose for ending the tenancy for at least six months duration.

If I were to uphold the Tenants' claim, I would have to firstly find that the Tenants received the Two Month Notice. In this case the Landlord stated that they accidentally forwarded the Two Month Notice to the Tenants and then immediately (within 23 minutes) sent another email to the same email address cancelling the Two Month Notice.

Section 88 of the Act establishes the ways in which notices to end tenancy are required or permitted to be served on a party to dispute resolution. I find that in February 2020, email was not one of the ways in which a Notice to End Tenancy could be served.

Considering that the Landlords' stated the email of the Two Month Notice was a mistake; that they asked the Tenants to disregard the email within a reasonable amount of time; and, that email is not a permitted way to serve a Two Month Notice, I find that the Notice was not valid and that the Tenants did not have to end their tenancy based on the Two Month Notice.

I also find that the Tenants provided conflicting evidence when they testified that they were intending on establishing a tenancy for several years, yet signed a Mutual Agreement to End a Tenancy, dated March 19, 2019. Furthermore, I find it odd when the Tenants testified that they received the Two Month Notice via an email address but didn't see the Landlords' email asking them to disregard the Two Month Notice and then continued to use the same email to correspond with the Landlords.

In this case, I find that the Tenants' failed to provide sufficient evidence that the tenancy ended as a result of a valid Two Month Notice and that compensation of any sort was due. I dismiss the Tenants' claim in its entirety without leave to reapply.

Conclusion

I dismiss the Landlords' Application for Dispute Resolution without leave to reapply.

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply.

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: November 04, 2020

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Residential Tenancy Branch