



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served each of the two landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 21, 2020. Both parties also confirmed the landlords served the tenant with their submitted documentary evidence via Express Mail on January 4, 2021. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the tenant's monetary claim was clarified in that he seeks monetary compensation under section 51 of the Act as the landlords have failed to take steps to accomplish the stated purpose for ending the tenancy or the rental unit was not used for that stated purpose for at least 6 months duration.

Residential Tenancy Branch, Rules of Procedure, Rule 7, states in part,

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I note for the record "evidence must be presented" was explained in detail repeatedly to both parties regarding their evidence throughout the hearing. At times, both parties made general references to evidence that they had submitted without a specific reference to any particular file or document or how it was relevant to the dispute. Both parties were informed that the mention of their evidence was not sufficient and that they would have to identify a specific document and provide submissions on how that evidence was relevant. In this case, neither party referenced any specific documentary evidence submitted.

#### Issue(s) to be Decided

Is the tenant entitled a monetary order for compensation and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$8,900.00 which consists of:

\$8,800.00	Compensation, Sec. 51 (2)
\$100.00	Filing Fee

Both parties confirmed that the landlord served the tenant with a notice to end tenancy for landlord's use. Both parties confirmed that the landlords' stated reason was for a close family member to occupy the rental unit.

The tenant stated that the landlord did not have a close family member occupy the rental unit and re-rented the unit out. The landlords confirmed that the rental unit was re-rented, but that this was after their in-laws occupied the unit for 2 days. The landlords stated that due to poor health the in-laws moved into the main house and it was decided that the rental unit would be re-rented. The landlords stated that the rental was re-rented two weeks later.

### Analysis

Section 51 (2) of the Act states in part, ...the landlord must pay the tenant in addition to the amount payable under subsection (1), an amount that is the equivalent to 12 times the monthly rent payable 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.

Both parties confirmed that the monthly rent was \$805.00; the landlords did not occupy the rental unit or have a close family member occupy it; and the landlords re-rented the unit.

The landlords have claimed that their in-laws did occupy the rental unit for 2 days before suffering personal health issues. The landlords stated that the in-laws moved into the main house and the rental unit was re-rented within 2 weeks.

In this case, I find that despite the landlords' claims that the rental unit was meant for the in-laws the landlords re-rented the unit within 2 weeks. No further evidence was submitted for any extenuating circumstances by the landlord. On this basis, I find that 51 (3) does not apply.

I find based upon the above undisputed evidence of both parties that the tenant has established a claim for compensation under section 51 of the Act. The landlords or a close family member did not occupy the rental unit nor was it used for at least 6 months duration as stipulated in the Act.

The tenant has requested a monetary claim of \$8,900.00 which consists of \$8,800.00 at 12 months rent (\$733.33 per month) for compensation and \$100.00 for recovery of the filing fee, however both parties confirmed during the hearing in their direct testimony that monthly rent was \$805.00 per month. I find that a total at \$805.00 per month at 12 months has a total of \$9,660.00, which exceeds the tenant's filed claim. I take note of the submitted copy of the signed tenancy agreement dated July 8, 2015 submitted by the tenant which shows that monthly rent was \$775.00. \$775.00 per month at 12 months equal \$9,300.00 which also exceeds the tenant's monetary claim. I find that the 2015 tenancy agreement is of no assistance.

I find as no other evidence was presented regarding the monthly rent that I shall proceed on the assumption of monthly rent based upon the undisputed affirmed evidence of both parties at \$805.00 per month during the tenancy. I find that the original monetary claim was filed by the tenant with a math error.

The tenant has established a total monetary claim of \$9,660.00 in compensation. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$9,760.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: February 04, 2021

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Residential Tenancy Branch