



# 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* (Act) for a monetary order in the amount of \$24,304.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, specifically 12 months compensation for landlord failing to comply with reason stated on 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and to recover the cost of the filing fee.

The tenants, the landlords, and a translator for landlord QX attended the teleconference hearing. The parties were affirmed. The parties gave affirmed testimony, were provided the opportunity to present evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had the opportunity to review documentary evidence from the other party, I find the parties were sufficiently served.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Are the tenants entitled to 12 months compensation due to the landlords failing to comply with the reason stated in the 2 Month Notice under the Act?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The tenants were asked to present the 2 Month Notice at the start of the hearing. The tenants only submitted page 1 of 4 of the 2 Month Notice. The tenants were asked why they didn't submit the entire 2 Month Notice for my consideration. The tenants admitted that it was a mistake for not submitting the entire 2 Month Notice and only page 1 of the 2 Month Notice.

The tenants attempted to withdraw their claim by asking if the landlords would consent to the tenants withdrawing their application in full. The landlords did not agree to allow the tenants to withdraw their application as the landlords were ready to proceed and want to put this matter behind them.

In addition, the respondent did not submit a copy of a 2 Month Notice into evidence. The claim before me is the tenants' claim and at the very least, I would expect for the tenants to supply a copy of the 2 Month Notice before I hear from the respondent landlords. As pages 2, 3 and 4 of the 2 Month Notice have not been included for my consideration, I will address this issue below.

### Analysis

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

Firstly, the tenants are intending to rely on section 51(2) of the Act which states:

(2) 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 the landlord or purchaser, as applicable, does not establish that**

**(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and**

**(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[emphasis added]

Given the above, the first issue for me to determine is whether there is a 2 Month Notice before me. Once I am satisfied that there is, I would then hear testimony and consider documentary evidence from the landlords.

In this matter, I find the tenants failed to exercise reasonable due diligence by submitting a full copy of the 2 Month Notice into evidence. Furthermore, I find that it is not the responsibility of the respondent to substantiate a claim for the applicant. Therefore, I find that the onus of proof does not revert to the landlords until such time that I am satisfied that a fully complete 2 Month Notice is before me, and that I have had the opportunity to review what is listed on the 2 Month Notice to determine whether it meets the requirements of the Act to be a legal 2 Month Notice.

As the tenants failed to submit a full copy of the 2 Month Notice and there is no reason stated for the 2 Month Notice before me for my consideration, **I dismiss** the tenants' application in full **without leave to reapply**, as I find the onus does not revert to the landlords without first supplying a full copy of the 2 Month Notice. I cannot think of a more important document to submit in this matter, than a full copy of the 2 Month Notice and yet it was not provided for my consideration. I find this to be a fatal flaw as a result.

I do not grant the filing fee as this matter has been dismissed without leave to reapply.

### Conclusion

The tenants' application fails in its entirety.

The filing fee is not granted.

This decision will be emailed to both parties.

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: March 24, 2022

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Residential Tenancy Branch