



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$21,600.00 for damage or compensation under the Act; and to recover their \$100.00 Application filing fee.

The Tenants, T.N. and C.C., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. One witness for the Tenants, J.N. ("Witness"), was also present and provided affirmed testimony. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlord with these documents and their evidence by Canada Post registered mail, sent on July 6, 2022. The Tenants provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenants provided their email address in the Application and they confirmed it in the hearing. They did not have an email address for the Landlord, and so I told them we would mail the Decision to the address the Landlord provided for service in the Two Month Notice, and email it to the Tenants.

At the outset of the hearing, I advised the Tenants that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Tenants confirmed that the tenancy began on January 1, 2021, and ended on January 1, 2022, when they were evicted by the Landlord. They said the tenancy agreement required them to pay the Landlord a monthly rent of \$1,800.00, due on the first day of each month. The Tenants said they were not required to pay their original landlord a security or pet damage deposit.

The Two Month Notice was signed and dated October 26, 2021, it has the rental unit address, it was served in person on October 26, 2021, with an effective vacancy date of January 1, 2022. The Two Month Notice was served on the grounds that all of the conditions for the sale of the rental unit have been satisfied, and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenants applied for compensation pursuant to section 51 of the Act, because they say the new Landlord (purchaser) did not fulfill the stated purpose on the Two Month Notice. Section 51 (2) states that a landlord must pay the tenant:

...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.

[emphasis added]

The Tenants submitted photographs of the residential property they said was being advertised for rent on a public online marketplace site on March 1, 2022, for \$2,600.00 of \$800.00 more than they paid for rent.

### Analysis

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

The evidence before me is that two months after the January 1, 2022 effective vacancy date required on the Two Month Notice, the residential property was not used for the purpose stated in the Two Month Notice; rather it was advertised for rent at a much higher rate. I find that this conflicts with the requirement under section 51 (2) of the Act for the rental unit to be used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the evidence before me, overall, I find that the Tenants are successful in their Application, because I find the Landlord breached sections 49 and 51 of the Act, by not having the new Landlord or their close family member occupy the rental unit beyond "at least" six months after the end of the tenancy. I find that the evidence of the residential property being advertised for rent in March 2022 – two months after the Tenants vacated the rental unit on January 1, 2022 – indicates that the stated purpose of the Two Month Notice was never accomplished, let alone within a reasonable time after the effective vacancy date.

I, therefore, award the Tenants **twelve times their \$1,800.00 rent or \$21,600.00** from the Landlord. Given their success, I also award the Tenants with recovery of their **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. I, therefore, grant the Tenants a Monetary Order of **\$21,700.00**, from the Landlord pursuant to sections 51 (2) and 67 of the Act.

Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of **\$21,600.00**. The Landlord did not attend the hearing to provide evidence to establish their good faith intention for a close family member to occupy the rental unit – the purpose of the Two Month Notice. The Tenants are also awarded recovery of their **\$100.00** Application filing fee from the Landlord.

I, therefore, grant the Tenants a **Monetary Order** under section 67 of the Act from the Landlord in the amount of **\$21,700.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 15, 2023

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Residential Tenancy Branch