



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, FF

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a notice to end tenancy for landlord use of property and for a monetary order for money owed or compensation for damages or loss under the Act.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and Procedural matters

At the outset of the hearing, the parties agreed the tenancy ended on September 30, 2013, as a result I find it not necessary to hear the tenants' application to cancel the 2 Month Notice to end Tenancy. This hearing proceeded on the balance of the tenants' application.

At the start of the hearing I went through the nature of the dispute listed in the tenants' application. After the hearing it was discovered that the landlord had filed an application that was joined to be heard with the tenants' application, however, neither party identified that the landlord had filed an application for dispute resolution during the hearing.

As I did not have the landlord's application before me during the hearing and if this decision does not address the nature of their dispute the landlord's is at liberty to reapply.

### Issue to be Decided

Are the tenants entitled to a monetary order for money owed or compensation under the Act?

### Background and Evidence

The tenancy began on November 1, 2012. Rent in the amount of \$1,600.00 was payable on the first of each month.

The tenants testified that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property which was dated August 20, 2013, with an effective vacancy date of October 30, 2013.

The tenants testified that the landlord agreed that their rent would be reduced from \$1,600.00 to \$1,100.00 for the inconvenience of the landlord showing the rental unit to prospective buyers. The tenants stated that agreement also provided them with free rent for September 2013. Filed in evidence is an email dated May 31, 2013.

The landlord testified that on September 11, 2013, they received notice from the tenants what they would be vacating the unit on September 30, 2013. The landlord stated that the tenants have received compensation for receiving the notice, as they did not pay any rent for September 2013.

The landlord testified that they reduced the tenants' rent while the house was being shown, however, they were not required to give them a rent reduction. The landlord stated there was no agreement that the tenant would be getting rent for September 2013, free and then receiving further compensation equal to one month of rent. The landlord stated that her email was to keep the tenants informed of what would happen if the house was to sell.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The evidence of the parties was that the tenancy ended on September 30, 2013, and that the tenants did not pay any rent for September 2013.

The evidence of the tenants was that September 2013, rent was free based on the email they received on May 31, 2013 and not compensation for receiving the 2 month notice. The landlord disputed the tenant's interpretation of the email.

The email in part reads, "... And because of that trouble I would say rent could be \$1100 a month unit we sell. Subject to selling would be at least 30 days and up to 60 days for you to find another place and move out.. and after sale the last month live there would be free"... So starting July rent would be \$1100 and if we sell in July and you find a place for September then August rent would be \$0. Hope this makes sense."

[Reproduced as written.]

Upon my review of the email, the landlord is simply attempting to explain to the tenants the process of what would happen when the home sells.

Under section 51 of the Act, a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable, the tenant may withhold the last month's rent.

In this case, I find the tenants' position unreasonable and that their application is without merit as they have received compensation as required by the Act, as they did not pay rent for September 2013. Further, any additional compensation would be an unjust enrichment that the tenants are not entitled to under the Act. I find the tenants have failed to prove the landlord has violated the Act. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenants' application had no merit and was dismissed. The tenants are not entitled to recover the cost of the filing fee from the landlord.

### Conclusion

The tenants' application is dismissed.

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 06, 2013

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Residential Tenancy Branch

