



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present testimony and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution and receipt of their evidentiary package after the documents were sent by way of Canada Post Registered Mail. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been served with all documents.

The tenants confirmed receipt of the landlord's evidentiary package after it was sent to the tenants by way of Canada Post Registered Mail. The tenants are found pursuant to section 88 of the *Act* to have been served with this package in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

### Background and Evidence

The tenants explained this tenancy began in November 2015 and ended on May 31, 2018. Rent was \$1,700.00 per month and \$565.00 of the security deposit was returned to the tenants following the conclusion of the tenancy. The tenants said they agreed to surrender a portion of their security deposit to the landlord following the conclusion of the tenancy.

The tenants explained that on April 3, 2018 the landlord phoned to inform them that he required vacant possession of their rental unit because his son was soon to be married and would be moving into the rental unit with his new wife. The tenants said that following this phone call, a text message containing an image of the first page of a 2 Month Notice to End Tenancy ("2 Month Notice") was sent to them.

On May 31, 2018 the tenants vacated the property pursuant to this 2 Month Notice sent to them via text on April 3, 2018. The tenants said that as they moved out of the property, five students began moving into the property. The tenants testified that they spoke directly with the students who moved into the property and none of the students who were set to occupy the rental unit identified themselves as the landlord's son. The tenants said it was apparent that the landlord's son and his new wife were not moving into the property.

The landlord agreed that he texted an image of the first page of a 2 Month Notice to the tenants but he also alleged that he served the tenants with a physical copy of the 2 Month Notice. The tenants disputed this. In his evidentiary package, the landlord supplied only the second page of a 2 Month Notice. The reasons cited on the second page of the 2 Month Notice uploaded with the landlord's evidence were listed as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse); and*
- *The tenant no longer qualifies for the subsidized rental unit.*

When asked to explain the second reason cited on the 2 Month Notice the landlord said the tenants had allowed their mother to occupy the rental unit without his permission. The landlord alleged this violated a clause of their tenancy agreement. Furthermore, the landlord said that while his son did not initially move into the premises, he did eventually occupy the suite "in the first week of June" after the students moved out. The landlord

explained the students who moved into the rental unit were friends of his son, and they vacated the rental suite after only a week because of the alleged poor condition in which the suite was left.

The tenants disputed these allegations and explained the rental unit was not subsidized. The tenants said the rental agreement signed by the parties was a standard agreement that would be typical of any private landlord/tenant relationship.

### Analysis

The tenants have applied for a monetary award of \$3,400.00 after having vacated the rental unit following the issuance of a 2 Month Notice to End Tenancy based on the landlord's use of property.

Section 51(1) of the *Act* states, "If steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement."

I am satisfied based on the evidence before me and the testimony provided by the tenants that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. The tenants testified that they were met by five students who were moving into the rental unit on May 31, 2018 while they themselves were moving out of the unit. The landlord provided inconsistent testimony related to the matter. At first the landlord conceded that the unit was rented to the students. However, he later changed his testimony, arguing that the unit was in fact occupied by his son "in early June" after the students moved out. Furthermore, the landlord said a 2 Month Notice was issued not only because a "close family member" was to occupy the rental unit but also because the tenant failed to qualify for a subsidized rental unit. I find little evidence was presented that the rental unit was subsidized in any way or that the parties had an agreement that fell outside the scope of a traditional landlord tenant relationship.

*Residential Tenancy Policy Guideline #50* states as follows, "steps to accomplish the purpose for ending the tenancy or using it for that purpose [must be taken] as soon as possible, or as soon as the circumstances permit...a landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying

the rental unit for at least 6 months.” I find that even if I were to accept the landlord’s submission that his son did occupy the suite, this did not occur “as soon as possible” as was demonstrated by the immediate occupation of the home by five students. For these reasons, I dismiss the landlord’s argument that the property was used in accordance with the 2 Month Notice. I find that the property was not used for the purposes as indicated on the 2 Month Notice and that the tenants are entitled to a monetary award under the *Act*.

The tenants do not qualify for 12 months compensation pursuant to the revised section 51 of the *Act* because the 2 Month Notice was issued prior to the May 31, 2018 deadline.

### Conclusion

I issue a Monetary Order in the tenants’ favour in the amount of \$3,500.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

<b>Item</b>	<b><u>Amount</u></b>
Penalty for 2 month notice (2 x \$1,700.00)	\$3,400.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$3,500.00</b>

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 1, 2019

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Residential Tenancy Branch