



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### 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.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the first documentary evidence submission in person on July 18, 2019. The tenant stated that the second and third documentary evidence submissions were not served to the landlord. Both parties confirmed the landlord served the tenant with the submitted documentary evidence in person on October 7, 2019. Neither party raised any other service issues. I accept the evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package and the tenant's first documentary evidence submission and the landlord's only documentary evidence submission. On the tenant's second and third documentary evidence submission I find that as the tenant failed to serve these to the landlord, that they are excluded from consideration in this hearing for lack of service.

At the outset, both parties confirmed that neither had submitted a copy of the 2 months notice for landlord's use of property. However, after extensive discussions, both parties agreed to the contents of the 2 month notice and the hearing proceeded.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?

### 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.

This tenancy began on August 31, 2017 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 31, 2017. The monthly rent was \$1,150.00 and a security deposit of \$500.00 was paid.

The tenant seeks a monetary claim of \$13,800.00 for compensation of 12 months rent at \$1,150.00 per month. The tenant claims that the landlord failed to occupy the rental unit after the tenant vacated the premises.

Both parties confirmed in their direct testimony that the landlord served to the tenant a 2 month notice to end tenancy issued for landlord's use of property dated June 30, 2018. The 2 month notice provides for an effective end of tenancy date of August 31, 2018 and that the reason selected was:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse of child; or the parent or child of that individual's spouse).*

The landlord disputes this claim stating that in December 2018 the landlord moved into the property and occupied it with his wife.

The tenant argues that she has pictures of a garbage can which shows that no one was residing in the property. The tenant also refers to a picture of the front of the house in which shows no tracks in the snow. The tenant has stated that her mother lives next door and had knocked on the door several times with no answer at the door. The tenant's witness, W.H. stated that he walks around the neighborhood frequently and has never seen anyone move-in or live at the house. The witness also stated that he has never seen any cars parked in the driveway. The witness stated he has seen the landlord's father working in the front or back of the house and that he saw through a window a tv and couch. The witness concluded that he believes the landlord lives across the street in his fathers house.

The landlord has argued that he did occupy the property in December 2018. The landlord has provided an affidavit from his father and a neighbor to confirm this. The

landlord also relies upon the submission of photographs in the building showing that he lives there. The landlord also relies upon a picture of a group of men who attended his house for a backyard party.

### Analysis

Section 51 of the Act states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement if 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 the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, I accept the undisputed evidence that the landlord served the tenant with a 2 month notice dated June 30, 2019 with an effective end of tenancy date of August 31, 2019. Both parties confirmed the tenant vacated the rental unit on August 31, 2018 for the stated reason of landlord's use of property.

In this case, the tenant has claimed that the landlord has not occupied the rental unit and relies primarily on a photograph of the front of the house after snowing. The tenant claims that this is proof that the property was not occupied by the landlord. The tenant has also referenced another photograph not in evidence of a garbage can stating that they were not emptied by the local municipality and that this was proof that the landlord was not occupying the property. The tenant also relies upon the testimony of her mother's boyfriend/roommate, who has stated in his opinion that although he has seen furniture in the house, he does not believe the landlord occupies the property. In contrast the landlord has provided sworn affidavit material from his father and a neighbor in support that he did move-in. The landlord has also provided photographs of the property showing furniture in the building.

On the basis of the evidence provided by both parties, I find on a balance of probabilities that the tenant has failed to show that the landlord did not occupy the rental unit as per the 2 month notice. The evidence relied upon by the tenant is circumstantial and is insufficient to assist me in determining if the landlord did not occupy the rental property as claimed. The tenant's application is dismissed.

### Conclusion

The tenant's 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: October 22, 2019

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Residential Tenancy Branch