



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDCL, MNDCT, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act"). The matter was set for a conference call hearing.

On May 10, 2021, The Tenants applied for compensation from the Landlord related to a notice to end tenancy for landlords use of property.

On September 15, 2021, The Landlord applied requesting compensation for damage to the rental unit and for money owed or compensation for damage or loss under the Act. The Landlord also made a claim against a security deposit.

Both parties were present at the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure and my interim orders. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants testified that they were never served with the Landlords Notice of Dispute Resolution Proceeding and a copy of all of his documentary evidence for his claims.

The Landlord testified that he served the Tenants with the Notice of Dispute Resolution Proceeding using registered mail sent to the Tenants' service address on September

26, 2021. The Landlord provided a copy of the registered mail receipt and address label as proof of service. The Landlord stated that the registered mail was never claimed.

After a review of the Landlord's documentary evidence, I note that the Landlord sent the Notice of Dispute Resolution Proceeding and any included documentary evidence to the wrong address. It appears the error was a simple clerical mistake regarding the unit number.

I find that the Tenants were not properly served with the Landlord's application and evidence and I dismissed the Landlord's application with leave to reapply.

If the Landlord chooses to reapply for dispute resolution, he is reminded that a monetary order worksheet will be required to identify each specific claim and to assign a monetary claim value for each claim. Section 2.5 of the Residential Tenancy Branch Rules of Procedure states an applicant must submit a detailed calculation of any monetary claim being made.

The hearing proceeded based on the Tenants' application.

#### Issues to be Decided

- Are the Tenants entitled to compensation of \$10,800.00?

#### Background and Evidence

The Tenants stated that their tenancy began back in 2016. The original Landlord sold the house to the purchasing Landlord who assumed the tenancy. The Landlord and Tenants testified that the tenancy was on a month-to-month basis on January 11, 2021 when the Landlord issued a notice to end tenancy for Landlords use of property. Rent in the amount of \$900.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the original Landlord a security deposit in the amount of \$425.00.

The parties testified that the tenancy ended on March 31, 2021 when the Tenants moved out of the rental unit after receiving a Two Month Notice to End Tenancy for Landlords Use of Property dated January 11, 2021 ("the Two Month Notice").

The Tenants provided a copy of the Two Month Notice. The reason cited for ending the tenancy cited within the Two Month Notice is:

*The rental unit will be occupied by the Landlord or the Landlords close family member. The Landlord or the Landlords spouse.*

The Tenants are seeking compensation in the amount of \$10,800.00 which is twelve months of rent paid under the tenancy agreement.

The Tenants stated that the Landlord sold the property five weeks approximately five weeks after they moved out. The Tenants testified that the Landlord told them he was moving into the home.

The Tenants testified that in May 2021 they observed a for sale sign on the property indicating the home had been sold. The Tenants provided a photograph of a sold sign situated on the property.

In reply, the Landlord testified that in 2020 he had informed the Tenants that he would not be offering them a new lease and after their lease expired, he issued them the Two Month Notice. He testified that on April 1, 2021 he moved into the rental unit.

The Landlord stated that he wanted to make improvements to the property; however, it was appraised for a low amount and he ended up getting a second mortgage on the property and could not afford to make the mortgage payments.

The Landlord stated that he put the property up for sale and it sold quickly with a completion date of May 20, 2021. The Landlord stated that he moved out of the house by the middle of May 2021.

The Landlord was asked if there are exceptional circumstances present that would excuse him from having to pay compensation to the Tenants and he replied that the condition the home was left in is a relevant consideration because he could not live there and needed to make improvements.

The Tenants replied that the house had a lot of ongoing problems and the condition of the unit is irrelevant to the issue to be determined.

### Analysis

Section 51 (2) of the Act provides:

*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*

*(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.*

*(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

I find that the Landlord issued the Two Month Notice to the Tenants who accepted it and moved out of the rental unit on March 31, 2021.

I accept the Landlord's evidence that he moved into the unit on April 1, 2021 and then moved out approximately 6 weeks later in mid May 2021. I find that the Landlord sold the rental effective May 20, 2021.

I have considered section 51(2) of the Act which provides that the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

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.

The Act is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do accomplish the stated purpose for at least 6 months duration.

In accordance with section 51(2) of the Act, I find that the Landlord must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation.

I find that circumstances such as fire or death, where it would be unreasonable and unjust for a landlord to pay compensation are serious and/ or significant circumstances. I find that the circumstances that need to be present to excuse a landlord from paying compensation need to be significant.

I have considered the Landlord's submission that the condition of the home at the end of the tenancy is an extenuating circumstance. I find that it is not. The Landlord should have been aware of the condition of the home prior to deciding to end the tenancy to occupy it himself. I do not find this to be a valid excuse for his decision to sell the rental home after he borrowed money to make improvements.

In accordance with section 51(3) of the Act it is my finding that the circumstances submitted by the Landlord do not meet the threshold of an extenuating circumstance in accordance with the intention of the legislation and the policy guideline.

The legislation does not permit me authority to vary the amount of compensation for a breach of section 51(2)(b) of the Act. I find that the Landlord owes the Tenants \$10,800.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$10,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Tenants are successful with their monetary claim for 12 months' rent paid under the tenancy agreement. The Landlord issued the Two Month Notice and sold the home prior to occupying it for a 6-month period.

I grant the Tenants a monetary order in the amount of \$10,900.00.

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 10, 2021

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Residential Tenancy Branch