

## **DECISION**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation under the Act for the equivalent of two months rent under section 51(2) when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and the landlord failed to utilize the unit for the purpose stated in the Notice.

Despite being properly served by registered mail sent on June 22, 2010, the landlord did not appear.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether the landlord, after ending the tenancy for landlord's use, then failed to utilize the rental unit for the purpose stated in the Notice with the Act including: a) proof it took steps to accomplish the stated purpose given for ending the tenancy within a reasonable period after the effective date of the notice and; b) proof that it used the property for the stated purpose for a period of at least 6 months

### **Background and Evidence**

The tenant testified that a Two-Month Notice was issued to terminate the tenancy for the purpose of allowing the landlord to move into the rental unit and the tenant complied by vacating at the end of May 2010. A copy of the Two Month Notice notice was submitted into evidence and indicated that the tenancy was being terminated because: *"the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse."*

The tenant testified that sometime in June 2010 the tenants discovered that the subject residence was listed for sale and concluded that the landlord was therefore not utilizing the rental premises for the purpose stated on the Two-Month Notice. A copy of the real

estate listing was submitted into evidence confirming that the property at the subject address was for sale.

The tenant's position was that the fact that the premises were put up for sale prior to the 6-month period specified in section 51 of the Act, was proof that the landlord was not genuinely residing in the unit which was the purpose stated in the Two-Month Notice. The tenant stated that the landlord was therefore obligated under the Act to compensate the tenant the equivalent of two-months rent in the amount of \$2,400.00.

**Analysis:**

Section 49(3) of the Act provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 51(2) of the Act states that in addition to the one month payable under section 51(1), the landlord must also pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement 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.

It was established, based on the evidence and testimony that the landlord did list the subject property for sale after the termination of the tenancy. This raised doubt about whether or not the landlord was actually utilizing the rental unit for the purpose stated in the notice and I find that only the landlord would have been in a position to refute this allegation and failed to do so.

I find that the landlord ended the tenancy under section 49(3) alleging that a family member would be residing in the unit. Had the landlord intended to terminate the tenancy so that the landlord could sell the premises, this would entail issuing a Two-Month Notice under section 49(5)(a) of the Act after an offer to purchase was already received and all conditions of the sale remove to comply with sections 49(5)(b) and 49(5)(c) of the Act.

In this instance I find that the landlord's stated intent was to purportedly *occupy the unit* and while the tenant accepted the termination of the tenancy on this basis, the landlord chose instead to place the home on the market for sale.

Given the above, I find that the rental unit was not genuinely occupied by the landlord for at least 6 months beginning within a reasonable period after the effective date of the notice. I therefore find that under section 51(2) the tenant is entitled to receive

\$2,400.00 comprised of double the monthly rent of \$1,200.00 and the \$50.00 fee for filing the application.

**Conclusion**

Based on the testimony and evidence, I hereby grant the tenant a monetary order in the amount of \$2,450.00 against the landlord. This Order must be served on the landlord in person or by registered mail and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 2010.

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Dispute Resolution Officer