



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNDC, O

### **Introduction**

This Hearing was scheduled to hear the Tenants' application for compensation for damage or loss in the equivalent of 2 month's rent pursuant to the provisions of Section 51(2) of the Act.

The parties gave affirmed 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 to me.

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

- (1) Are the Tenants entitled to a Monetary Order in the amount of \$4,000.00 pursuant to the provisions of Section 51(2) of the Act?

### **Background and Evidence**

The rental unit is a house. The Landlords KD and PD (the "Purchasers") purchased the rental unit from the Landlords LB and SB (the "Sellers"). A copy of the Contract of Purchase and Sale was entered in evidence. The Contract of Purchase and Sale was signed on February 12, 2010, with a closing date of May 1, 2010.

The Purchasers required vacant possession of the rental unit, and asked the Sellers to give the Tenants notice to vacate the rental unit. A copy of the Contract and Sale

Addendum was entered in evidence which states, in part, "The buyer hereby requests the seller to give notice to the tenant to vacate the premise because the buyer is going to demolish the property after taking possession." The Addendum was drafted on February 22, 2010. One of the Sellers testified that he signed it sometime after February 24, 2010, but does not recall the exact date (there is no provision on the document for recording the date the parties signed the Addendum).

This Seller also testified that the Purchaser's realtor had advised him that the Purchasers were going to live in the rental unit. On February 24, one of the selling Landlords gave the Tenants notice (the "Notice") to move out of the rental unit by April 30, 2010. A copy of the selling Landlord's Notice was entered in evidence. The Notice is not in the approved form as required by the Act..

The Tenants stated that they acted on the Notice in good faith and that, although the Notice was not in the approved form, it had all the necessary information on it, i.e. the date the Notice was issued; the address of the rental unit; the names of the parties; and the effective date of the end of the tenancy.

On March 1, 2010, the Tenants gave the Sellers verbal notice that they would be vacating the rental unit early. The Tenants moved out of the rental unit in mid-March, 2010. The Tenants were compensated by not paying the last month's rent.

The Sellers testified that subsequent to providing the Tenants with the Notice, he spoke to a person at the Residential Tenancy Branch and discovered that the Notice was not valid. He stated that he told the Tenants to disregard the Notice.

The Tenants disputed that the Seller told them to disregard the Notice and stated that the Seller simply told them he was concerned about the Notice, and that he would have to provide them with compensation in the equivalent of one month's rent.

The Seller stated that by the time he had discovered that the Notice was not a valid Notice, the Tenants had given their notice that they were moving out of the rental unit early, so he “let it go”.

### **Analysis**

There is no provision in Section 49 of the Act for the Sellers to end a tenancy because the Purchasers wish to demolish the rental unit. In a situation such as this, the Purchasers must give the Tenants effective Notice under Section 49 after they have purchased the rental unit.

Section 52 of the Act states:

#### **Form and content of notice to end tenancy**

##### **52 In order to be effective, a notice to end a tenancy must be in writing and must**

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

(emphasis added)

The Tenants submit that, although the Sellers did not give the Tenants effective Notice under Section 49 of the Act, the Tenants relied on the ineffective notice. The Tenants have been compensated. The Sellers agreed that they did not have to pay rent for the last month of the tenancy.

The Tenants are also applying for compensation under the provisions of Section 51(2) of the Act. Section 51 of the Act states:

**Tenant's compensation: section 49 notice**

**51** (1) A tenant **who receives a notice to end a tenancy under section 49 [*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 under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) 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

(b) 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, or the purchaser, 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.

(emphasis added)

The Tenants did not **receive** a Notice to End Tenancy under Section 49 of the Act, and therefore, pursuant to the provisions of Section 51 of the Act, I find that they are not entitled to the compensation sought.

The Tenants' application is therefore dismissed.

**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 08, 2010.

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