



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **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 within a reasonable time. Both the landlord and the tenant appeared and each gave testimony in turn.

### **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 in compliance with the Act including: a) proof it took steps 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 of the property for the stated purpose for a period of at least 6 months

### **Background and Evidence**

The tenancy began in October 2002 and the rent was \$1,850.00. Both parties acknowledged that the Two-Month Notice was issued to terminate the tenancy for the purpose of allowing the landlord's relatives to move into the rental unit and the tenant fully complied with the Notice by vacating on June 30, 2010. The tenant received one-month compensation as required under section 51(1) of the Act and the security deposit was refunded back to the tenant.

The tenant testified that they discovered that the subject residence was never occupied by the landlord's close family member, nor anyone else, since they vacated and was left empty for the duration. The tenant concluded that the landlord was therefore not utilizing the rental premises for the purpose stated on the Two-Month Notice. A copy of the notice was submitted into evidence which 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’s position was that because the premises were not used for the stated purpose to date, which spanned a period of almost 6 months, the criteria under section 51(2)(a) of the Act has been met and the tenant is therefore claiming compensation of the equivalent of two months of rent in the amount of \$3,700.00.

The landlord conceded that the building was not occupied during the period in question. The landlord testified that this was due to the fact that repairs and renovations were necessary because of the tenant.

The landlord did not submit evidence of the alleged repairs and the tenant denied that any significant repairs beyond normal wear and tear were required and also disputed that any renovations had been done after the tenancy ended.

The landlord submitted late evidence verifying that her son had recently married and according to the landlord, the plan was that the newly-married couple would now move into the rental unit. The landlord testified that, given the circumstances, the length of time to ready the unit for occupancy was very reasonable.

### **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. I find that all agreed that this was the stated purpose given for ending the tenancy. 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.

The question to be answered is whether or not the building was utilized for the stated purpose within a reasonable time. It was firmly established, based on the evidence and testimony of both parties, that the landlord’s family member did not actually move into the subject property since the tenant’s tenancy ended on June 30, 2010 and, in fact, no future move-in date was even provided by the landlord.

Given the above, I find that the landlord has not succeeded in proving on a balance of probabilities that the rental unit was used for the stated purpose 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 \$3,750.00 comprised of double the monthly rent of \$1,850.00 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 \$3,750.00 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: December 2010.

---

Dispute Resolution Officer