



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. All parties were represented at the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that in July 2010 the tenant was served with a 2 month notice to end tenancy which alleged that the landlord or a close family member intended to reside in the rental unit.

The landlord testified that the owner had intended that his daughter would reside in the unit, but that at the end of the tenancy, he discovered that the rental unit was so badly damaged that it could not be repaired and he decided to sell it instead.

The tenant provided a copy of the picture of the unit which accompanied the listing. The landlord confirmed that he had taken the photograph and stated that he would have taken the photograph the day before it was listed for sale on October 24, 2010. The tenant testified that the photograph shows the vehicle of one of the subtenants who had been residing in the unit and argued that this proves that the landlord took the photograph prior to the end of the tenancy, which shows that the landlord never had any intention of himself or a family member residing in the unit, but had always intended that it be sold. The landlord denied having any such intention prior to the end of the tenancy and testified that one of the subtenants had not moved out prior to the time he took the photograph to include with the real estate listing.

The landlord provided photographs of the rental unit showing the condition of the empty unit and included in those photographs were pictures of the exterior of the unit showing

garbage piled all around it. The landlord testified that he took those photographs prior to the time the unit was listed for sale.

The tenant seeks compensation equivalent to two months' rent, pursuant to section 51 of the Act.

### Analysis

Section 51(2) of the Act provides as follows:

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

I find that the landlord failed to use the rental unit for the purpose stated in the notice to end tenancy. I do not accept the landlord's argument that the unit was so badly damaged, it could not be occupied. I find it more likely than not that the landlord intended to sell the unit prior to the end of the tenancy. I have determined this to be the case because of the inconsistency of the landlord's testimony. The landlord claimed that the subtenant's car was in the listing photograph because he had not yet moved out at the time the photograph was taken, but the landlord's other photographs which were allegedly taken prior to the time the unit was listed for sale, show the rental unit to have been empty. I find it likely that the landlord was taking photographs prior to the end of the tenancy with the intention of placing the unit for sale. I therefore find that the tenant did not thwart the landlord's intended use of the rental unit.

I find that the landlord is liable under section 52(2) to pay the tenant \$2,500.00, which is double the \$1,250.00 per month rent the tenant paid during the tenancy. I award the tenant \$2,500.00.

Conclusion

The tenant is awarded \$2,500.00.

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: April 26, 2011

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Residential Tenancy Branch