



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC

### **Introduction**

This hearing was convened in response to two (2) identical applications by the tenant being heard together. The first application filed on August 23, 2011 was replaced by the latter application which was filed September 12, 2011 and is an application by the tenant for compensation pursuant to section 51(2) of the Residential Tenancy Act (RTA) in respect to a section 49 Two (2) Month Notice to End Tenancy for Landlord's Use of Property (Notice to End) dated March 02, 2011 issued by the landlord with an effective date of May 30, 2011.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail on September 16, 2011, the landlord did not call into the conference call hearing. The tenant provided evidence of the registered mail service by way of receipts. The tenant provided that the registered mail was subsequently not retrieved by the landlord. I note that failure or neglect to accept registered mail is not a ground for Review under the Act. I find that the landlord has been served in accordance with Section 89 of the Act.

On the basis of the undisputed testimony presented and upon careful consideration of the relevant undisputed evidence submitted I have reached a decision.

### **Issues to be Decided**

Is the tenant entitled to a Monetary Order for the equivalent of two months' rent pursuant to section 51(2) of the Residential Tenancy Act?

### **Background and Evidence:**

This tenancy began May 01, 2007 and ended April 30, 2011. According to the tenant's testimony, and by way of submitted evidence from a previous decision respecting the parties, the rent payable was \$1000 per month. The tenancy ended after the tenant was

served with a 2 month Notice to End for landlord's Use of Property under section 49 of the Residential Tenancy Act. The Notice to End identified that the reason for ending the tenancy is: *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse*

The tenant purports that the rental property was subsequently sold in June 2011, after they vacated. The tenant's claim includes submissions of evidence that the rental unit was re-occupied by new tenants July 15, 2011. The tenant testified they spoke to the new tenants and confirmed they were not affiliated with the purported new landlord or the respondent landlord, nor the respondent landlord's spouse, or a close family member of the landlord or that of the landlord's spouse. The tenant provided part of a tenancy agreement effective July 15, 2011 between the applicants's previous agent for the landlord (PS and MS) and the purported new tenants (RB and DB) for a monthly rent payable of \$1400.

**Section 51** of the Residential Tenancy Act provides, in part, as follows:

**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.

(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.

**Analysis**

The Residential Tenancy Act (the Act) provides that the landlord must use the rental unit for the stated purpose in the Notice to End for at least 6 months. I have no evidence before me to counter the tenant's claim that the rental unit is not occupied in accordance with the purpose for which the Notice to End Tenancy was issued. On

preponderance of all the above evidence, and on the balance of probabilities, I accept the tenant's evidence as sufficiently meeting the tenant's onus of proof for this matter, and, effectively, find that they are therefore entitled to the amount prescribed by the Act: equivalent to double the monthly rent payable under the tenancy agreement. I find that amount equates to **\$2000**.

### **Conclusion**

I grant the tenant an order under Section 67 of the Act for the amount of **\$2000**. If necessary, this order may be filed in the Small Claims Court 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: October 31, 2011

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Residential Tenancy Branch