



# 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 on the tenant's application of January 10, 2012 seeking a monetary award in the equivalent of two month's rent on the ground that the landlord did not use the rental unit for the purpose stated on a Notice to End Tenancy for landlord use served on August 3, 2011.

### Issue(s) to be Decided

This application requires a decision on whether the rental unit was not used for the purpose stated on the Notice to End Tenancy of August 3, 2011 which was occupancy by the landlord or a close family member.

### Background and Evidence

The tenancy in question began on April 1, 2010 under a one year fixed term agreement which became a month to month tenancy at its conclusion and was managed by a third party property manager. Rent was \$1,595 per month.

The tenancy ended on September 26, 2011 when the tenant availed himself of the right to end the tenancy on 10 days notice when a tenancy is ending for landlord use. The tenant received the equivalent of one month's free rent as provided for under section 51(1) of the *Act*.

During the hearing, the tenant gave oral evidence that he had seen a listing of the rental unit offered for sale in November 2011. He stated that he had also checked with the building manager and had been advised that his former landlord had never paid a move-in fee after his tenancy had ended.

The tenant also notes that the landlord still uses her former address.

The landlord gave evidence that she had never intended to do anything other than move in to the rental unit, which she purchased following her husband's death around which time she also listed their home for sale. She said that in her senior years, she found the home maintenance overwhelming.

The landlord stated that she had begun staying in the rental unit frequently after the tenancy ended and that the building manager had told her she did not have to pay the move-in fee until she was moving in heavier furniture. .

The landlord stated that during the fall of 2011, she had suffered the loss of her brother in Germany, and subsequently, the loss of her sister-in-law which had resulted in a number of unplanned trips. In addition, she underwent eye surgery in October of 2011.

The landlord concurred that she had put the rental unit on the market in November as her house was not selling and she was having trouble coping with the two properties. She said it has now sold, but the closing date is March 30, 2012.

She said she continues to stay in the rental unit periodically and that it has been used for no other purpose than to accommodate her and family members.

### Analysis

Section 52(2) of the Act provides that if a landlord who has given notice under section 49 of the Act has not taken steps to accomplish the purpose stated on the notice, or who does not use it for that purpose for at least six months, must pay the tenant the equivalent of an additional two month's rent.

In the present matter, I accept the evidence of the landlord that the Notice to End Tenancy was served in good faith and that she has used the rental unit for her own use since immediately after the tenant left. I note that the landlord has retained her home address and has been absent for some periods due to family commitments, but I find no prohibition against her doing so in the legislation.

While the property was offered for sale in November 2011, the eventual sale does not close until March 30, 2012.

Therefore, I find that the rental unit was occupied by the landlord or a close family member, the reason stated in the Notice to End Tenancy, beginning within a reasonable time after the tenancy ended and continuing for six months.

In the absence of any proof that the landlord had rented the unit to another tenant during the material period, I find that the landlord has not breached the requirements of section 52(2) of the Act.

Therefore, I find that the tenant has not proven that he is entitled to reimbursement in the equivalent of two months' rent.

### Conclusion

The application is dismissed without leave to reapply.

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: March 27, 2012.

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Residential Tenancy Branch