



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDC, FF

### Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The applicants confirmed that they received the landlord's 2 Month Notice handed to one of them on May 6, 2012 and sent to the other by registered mail on May 7, 2012 (received on May 12, 2012). The landlord testified that she received a copy of the dispute resolution hearing package sent by the applicants May 24, 2012. I am satisfied that the above documents were sent to one another in accordance with the *Act*.

The landlord asked for an end to this tenancy and an Order of Possession to take effect on the earliest allowable date if the application to cancel the Notice were dismissed.

### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the applicants entitled to a monetary award for losses arising out of this tenancy? Are the applicants entitled to recover their filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicants' claim and my findings around each are set out below.

The most recent tenancy between these parties for the upper suite in this rental property commenced by way of a one-year fixed term tenancy on January 1, 2012. The sole tenant identified on the signed residential tenancy agreement is the male applicant (the tenant). There is no reference in the tenancy agreement to the female co-applicant in this dispute. Based on the oral and written evidence the woman identified as a co-applicant is the tenant's wife who lives in the rental unit with the tenant.

Monthly rent for the upper suite of this two-unit property is set at \$1,500.00, payable in advance on the first of each month. The tenant is also responsible for paying heat, hydro, water and cable. The landlord continues to hold the tenant's \$750.00 security deposit paid on January 1, 2012.

In addition to the application to cancel the landlord's 2 Month Notice, the applicants sought a monetary award of \$10,770.00. This amount included the following:

<b>Item</b>	<b>Amount</b>
Moving Services	\$3,000.00
Risk of Security – Unauthorized Unit	2,000.00
Travel & Time Cost for School – Out of Catchment Area (Sept – Dec 12 – 77 days @ \$10.00 per day)	770.00
Family Disruption, Stress & Anxiety	5,000.00
<b>Total Monetary Award Requested</b>	<b>\$10,770.00</b>

In addition, the applicants requested the recovery of their \$100.00 filing fee for their application and the consideration of the imposition of the maximum allowable administrative penalties possible against the landlord.

At the hearing, the female applicant confirmed that they have not incurred moving costs or travel costs for school as yet, as they remain in the rental unit. She maintained that she and her husband were entitled to a monetary award to compensate them for the landlord's failure to honour the one-year fixed term tenancy agreement that committed the landlord to renting the premises to them until December 31, 2012.

The landlord entered into written evidence a copy of a May 12, 2012 letter from the purchasers of the property who confirmed in that letter that they "are buying the property for our personal use and will using and living in the entire house and property." The landlord also provided multiple photographs, and copies of the tenancy agreement and the 2 Month Notice. In her written evidence, the landlord maintained that she had

advised the tenant(s) orally that she had sold her house on April 1, 2012 and that she was giving them a 2 Month Notice. She also entered into written evidence copies of a letter that she sent to the tenant confirming that she was giving him two months notice to end this tenancy.

At the hearing, the landlord confirmed that she did not issue a written 2 Month Notice on the approved form for doing so until May 6, 2012. The landlord confirmed that she backdated the 2 Month Notice given to an adult residing on the premises on May 6, 2012 to April 1, 2012. I noted that backdating such a Notice is not allowed and that, in accordance with the *Act*, I was correcting the effective date of the 2 Month Notice from May 31, 2012 to July 31, 2012, the earliest possible date that she could obtain an end to this tenancy based on a 2 Month Notice issued to the tenant on May 6, 2012.

At the hearing, the landlord testified that she has issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 2, 2012. She said that she had just applied for dispute resolution with respect to the 10 Day Notice and obtained a hearing date for June 28, 2012. She said that she had not yet served the tenant with a copy of that notice of hearing or her dispute resolution hearing package with respect to that application. As the landlord had not served the tenant with her application for dispute resolution, and had not notified the tenant that she would be raising this issue at this hearing, I advised the parties that I would not consider the 10 Day Notice as this matter differed from the issues before me in the current application.

#### Analysis- Application to Cancel the Landlord's 2 Month Notice

The landlord issued the 2 Month Notice on May 6, 2012 in accordance with the following provisions of section 49(5) of the *Act*:

*(5) A landlord may end a tenancy in respect of a rental unit if*

*(a) the landlord enters into an agreement in good faith to sell the rental unit,*

*(b) all the conditions on which the sale depends have been satisfied, and*

*(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*

*(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;...*

Based on the landlord's undisputed oral and written evidence, I find that there is no dispute that the landlord has issued the 2 Month Notice in accordance with section 49(5) of the *Act*.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

As the landlord has made an oral request for an Order of Possession and the application to cancel the 2 Month Notice is dismissed, I find that the landlord is entitled to end this tenancy on the basis of the 2 Month Notice issued on May 6, 2012. I issue an Order of Possession to take effect on the corrected effective date of this Notice, July 31, 2012.

#### Analysis – Application for a Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the applicants have not demonstrated any monetary loss arising out of this tenancy. The female applicant admitted that they have not incurred moving expenses, nor travel expenses to relocate their child, who has yet to enter school, to another school. I find that they are not entitled to monetary awards for any of these items. I find insufficient basis for their entitlement to monetary awards for such items as “risk of security” and “family disruption, stress and anxiety.” The applicants have not submitted any evidence from any health care professionals to support their application for a monetary award. I recognize that the applicants were not planning to end their

tenancy during the middle of their fixed term and that moving is disruptive. However, the *Act* allows a landlord to sell her property and obtain an end to a fixed tenancy when new purchasers wish to reside at the property.

I note that the parties agreed that the tenant did not pay monthly rent for May 2012. The tenant's lack of payment for May 2012 was intended to comply with the provision in section 51 of the *Act* which enables a tenant receiving a notice to end tenancy under section 49 of the *Act* to receive the equivalent of one month's rent from the landlord. This is the total amount of compensation allowed under section 51 of the *Act* for the landlord's issuance of the 2 Month Notice pursuant to section 49(5) of the *Act*. The only additional compensation allowed to a tenant whose tenancy has ended under s. 49(5), even for those with fixed term tenancies, is if the purchasers do not move into the rental premises following the end to the tenancy or remain in the premises for a six-month period. In that event, a tenant may apply for an additional month's compensation under section 51(2) of the *Act*, likely from the new purchaser.

Although the tenant and his wife believe that they are entitled to significantly more compensation for all of the expenses they may incur arising out of the landlord's sale of the property before the end of their fixed term tenancy and the stress they encounter with this process, there is no provision in the *Act* for such expenses. The *Act* allows a landlord to sell a property and limits the amount of compensation owing under these circumstances to the equivalent to a single month's rent. The fact that they had a fixed term tenancy agreement that was scheduled to last until December 31, 2012 has no bearing on the limit to compensation set out in section 51 of the *Act*.

For the above reasons, I dismiss this application for a monetary award without leave to reapply.

As this application has been unsuccessful, the applicants bear their filing costs.

### Conclusion

I dismiss the application to cancel the 2 Month Notice. Since the application to cancel the 2 Month Notice is dismissed, I issue an Order of Possession to the landlord to take effect by 1:00 p.m. on July 31, 2012.

I emphasize that the decision to end this tenancy and issue a July 31, 2012 Order of Possession has no bearing on the landlord's subsequent application to end this tenancy on the basis of the 10 Day Notice, which was not before me or considered at this hearing. The issue of the 10 Day Notice is a separate matter and one that will need to be addressed at a subsequent hearing.

I dismiss the applicant's application for a monetary Order without leave to reapply. Similarly, I dismiss the application to recover the filing fee from the landlord 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: June 15, 2012

---

Residential Tenancy Branch