



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the tenant entitled to additional compensation under section 51 of the Act because the landlord failed to occupy the rental unit after the tenancy ended?

### Background and Evidence

The parties provided slightly different evidence with respect to the monthly rent. The tenant submitted that the monthly rent was \$1,200.00 inclusive of utilities. The landlord submitted that the monthly rent was \$1,100.00 plus utilities that were estimated to be \$100.00 per month but subject to change. However, the landlord never adjusted the amount of utilities payable by the tenant. Neither party provided a copy of a written tenancy agreement for my review.

The tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated July 23, 2012 with a stated effective date of September 30, 2012. The Notice indicates that the reason the tenancy was ending was because the landlord, or a close family member of the landlord, intends to occupy the rental unit. The tenant filed to dispute the Notice and pursuant to a decision issued August 28, 2012 the Notice was upheld. The tenant vacated the rental unit September 22, 2012.

I heard that the tenant made deductions from rent payable for July 2012 and I was provided disputed testimony as to whether such deductions were made in accordance

with emergency repair provisions of the Act. Nevertheless, it was undisputed that the tenant withheld all of the rent for August 2012 and the parties considered the withholding of August 2012 to be the tenant's compensation for receiving the 2 Month Notice. I also heard that the tenant did not pay rent for September 2012 either but claims she authorized the landlord to retain the security deposit for rent owed for the days she occupied the unit in September 2012. The landlord acknowledged that the matter of unpaid rent for July and September 2012 were not pursued by the landlord. Although the matter of unpaid rent were not issues for me to decide with this Application, the landlord submitted that the loss of rent for three months impacted the landlord's decision to use movers to move her possessions to the rental property. Due to the loss of rental income the landlord canceled the movers, rented a cube truck and she moved her possessions to the unit herself, with the assistance of her daughter and her boyfriend.

The tenant is seeking compensation equivalent to two month's rent on the basis the landlord did not fulfill the stated purpose on the 2 Month Notice. The tenant submitted that the landlord did not move into the rental unit except for storing some of her furniture and possessions in the detached garage and does not live at the rental unit. The tenant submitted that nobody answers the door at the rental unit and neighbours, including the basement suite tenant, have informed the tenant that the landlord does not appear to reside at the rental unit. Evidence in support of this position includes the disconnection of the internet service that was in the tenant's name previously. Further, the landlord's daughters do not attend the school in the area of the rental unit.

The landlord submitted that she did move into the rental unit at the beginning of October 2012. The landlord acknowledged that she is often not at home due to her long work hours and commute and the time she spends with her family, especially since the recent death of her brother, and her boyfriend. The landlord acknowledged that her daughter's attend a school in a different area due to its music program. When the landlord took possession of the rental unit the internet service was still working so she did not obtain her own account until it stopped.

In an attempt to support their respective positions, both parties prepared written statements that they presented to neighbours for their signature. The written statements provide contradictory evidence as to whether the landlord appears to reside at the rental unit. One neighbour (referred to by initials WC) signed a statement for both the landlord and tenant.

The tenant called WC as a witness during the hearing. The witness testified that she does not understand written English and relies upon the person presenting a document to her to inform her of the content of the document.

The witness WC testified that after the tenancy ended the witness observed landlord, the landlord's daughter, and a man moving items into the rental unit and the garage on the property. WC testified that the landlord stated to WC that she was moving back into the rental unit. WC provided inconsistent testimony as to whether she has seen the landlord at the residential property in recent months.

### Analysis

Under section 49 of the Act, a landlord may end a tenancy "if the landlord or a close family member of the landlord intends in good faith to **occupy** the rental unit". This is the reason indicated on the Notice issued to the tenant in this case.

Under section 51(1) of the Act a tenant who receives a Notice to End Tenancy under section 49 is entitled to receive compensation from the landlord in an amount equivalent to one month's rent. This compensation has been received by the tenant.

Should the landlord fail to fulfill the purpose stated on the Notice to End Tenancy the landlord must pay the tenant additional compensation in an amount equivalent to two month's rent under section 51(2) of the Act. This is the section of the Act the tenant relies upon in making her claim against the landlord.

Section 51(2) reads:

(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.

Considering the relevant portions of section 49 and section 51(2) of the Act, I find that the issue for me to determine in this case is whether the landlord, or a close family member of the landlord, began to **occupy** the rental unit within a reasonable period of time after September 30, 2012.

It is important to note that the Act requires the landlord to “occupy” the rental unit after the tenancy ends. While both parties made opposing presentations as to whether the landlord “lives” or “resides” at the rental unit, this is not the criteria that the landlord must satisfy. Rather, my decision must be based upon the requirements stipulated by the Act, as it is written. As the Act requires the landlord to “occupy” the rental unit, that is the criteria that must be satisfied.

The Act does not define the term “occupy” and I have turned to the meaning provided by Black’s Law Dictionary. It defines “occupy” to mean: “to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.”

The meaning of occupy is not the same as reside and, based upon the definition of “occupy” I find that it is possible for a person to occupy a unit and still maintain another residence, even a primary residence, elsewhere.

Upon consideration of the landlord’s testimony that she moved her belongings into the rental unit in early October 2012, which was confirmed to be true by the tenant’s witness, and upon review of the receipt for a moving van dated October 6, 2012 I accept that the landlord took possession of the rental unit and began to use it for her purposes starting October 6, 2012. I was not presented any evidence that the landlord rented to the unit to someone else, permitted someone other than her daughters to occupy the rental unit, or listed the property for sale. Therefore, I am satisfied the landlord and/or her daughters began to occupy the rental unit within a reasonable period of time after the tenancy ended.

Having been satisfied the landlord began to occupy the rental unit within a reasonable period of time after the tenancy ended, I find the tenant’s claim fails and I dismiss her application.

### Conclusion

The tenant’s application is dismissed.

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: May 17, 2013

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Residential Tenancy Branch

