



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C.A. DEVELOPMENTS AND BILL'S DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC OLC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order for compensation of double the rental amount pursuant to sections 49 and 51 (2)(b); and
- b) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution personally. The landlord agreed he had received it as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to a refund of rent pursuant to sections 49 and 51 and to recover their filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said that they received the Notice to End Tenancy in February 2014 together with a Buyer's Notice to Seller that vacant possession was required as of 1:00 p.m. on May, 2014; it was signed by the purchaser. Enclosed with the evidence are both notices. The tenant said that after they vacated the property was immediately put up for sale; enclosed is a photograph of the For Sale sign on the lawn and a listing stating there was an open house on May 11, 2014 and detailing that there is a fully furnished basement suite as a mortgage helper. It is undisputed that rent was \$3100 monthly.

The seller said the purchaser told him that family was moving in so he gave the correct documents to the tenant. The buyer said his Father was going to move into the home in

May but then he became critically ill and was put in hospital. His condition was so bad that they did not think he could move into the home so they put in on the market. However, he improved in May so they applied for a development permit to install some items to address his disabled condition. He said the property is no longer on the market. He insists they had every intention in good faith to have their father occupy the home and he still intends to do that if it is modified to suit him. He said they bought the home in February but their father became ill between then and the closing date.

The tenant questioned the credibility of the buyer. He said they bought the home sight unseen which is most unusual if they intended a family member to occupy it. His wife said the buyer came later and her son showed him the house at which time he said he just wanted to see if it would hold all his furniture. The buyer did not deny this event occurred. The buyer said their father was elderly so the actual condition of the home was not important. The tenant said that he could not get extra time to move out and if the father was in hospital, why was this not possible? The seller said that the Notice to End Tenancy was effective April 30, 2014 and they were given until noon on May 1, 2014; he could not give longer for his contract required vacant possession at 1 p.m. The tenants confirmed they got one month's free rent and dealt with the security deposit so that is not an issue in this hearing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The *Residential Tenancy Act* provides in section 49:

*(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

*In section 51, it states:*

**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.*

I find issues of credibility. The tenant alleges the purchaser landlord did not intend for a family member in good faith to occupy the rental unit; it is undisputed that this was a tenancy of over 8 years so it was hardship for the tenants to move during the school year. As proof of lack of good faith and non compliance with section 51 of the Act, the tenant submitted evidence that the house was put immediately for sale and says it is still not occupied. The purchaser alleges he did intend his father to occupy the rental unit but his father became ill so he put the house on the market. He said his father is now a lot better so he has applied for a development permit only for changes needed to accommodate his father's disabilities. Although he states he has some proof of this, he did not provide it for the hearing.

I find the evidence of the tenant more credible and I prefer it to the evidence of the buyer landlord as the tenant's evidence is well supported by his documentary evidence. While the Notice to End Tenancy may have been served in good faith, I find insufficient evidence that steps have been taken to move the father into the rental unit as required by section 51(2)(a) of the Act. Furthermore, it is now over two months since the tenancy ended and the rental unit is not used for the stated purpose contrary to section 51(2)(b). I find the tenants' evidence well supported by the copy of the listing for sale with an open house scheduled for May 11, 2014; although the landlord alleges the house is now withdrawn from the market and he has applied for a development permit to accommodate his father's disabilities, he provided no documentary evidence to support his statements although he had notice of the claim and the tenants' evidence (such as the listing) against him. I find also that this is a 5 bedroom house with a basement suite and there was no evidence provided by the buyer as to any other occupancy from May 1 to date.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Amount equivalent to two months' rent	6200.00
Filing fee	50.00
Total Monetary Order to Tenant	6250.00

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: July 02, 2014

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Residential Tenancy Branch

