



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act for the equivalent of one month rent under section 51(1) applicable when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued. The tenant is also seeking the equivalent of two months rent under section 51(2).

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

I have reviewed all evidence submitted and properly served in accordance with the Act. However, only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

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

- Is the tenant entitled to receive one month free rent or the equivalent of one month rent under section 51(1) of the Act, upon vacating the unit pursuant to a section 49 Two Month Notice to End Tenancy for Landlord's Use?
- Is the tenant entitled to receive a refund of rent for the remaining portion of the month under section 50(1) of the Act because the tenant vacated earlier than the effective date shown on the 2-month Notice?

- Is the tenant entitled to receive the equivalent of two months rent under section 51(2) of the Act because the rental unit was not used for the purpose stated in the Two Month Notice to End Tenancy for Landlord's Use?

### **Preliminary Matters**

#### **Landlord's Evidence**

The landlord stated that they had submitted and served an evidence package prior to the hearing.

The landlord described the nature of the evidence and stated that it proved that the conduct of the tenant during the tenancy was objectionable and the tenant's treatment of the landlord was inappropriate.

The evidence in question was found in the file and included a written description of violations perpetrated by the tenant including dog breeding, damage to the home, verbal abuse by the tenant in speaking to the landlord and verification of medical problems suffered by the landlord. The landlord also submitted copies of utility bills, receipts for materials purchased, photographs and copies of advertisements listing the house for sale.

I found that the evidence submitted by the landlord is not relevant to the matter before me and explained that this hearing pertains only to the *tenant's* application with respect to the Two Month Notice to End Tenancy for Landlord's Use.

However, the landlord objected to this position and would not accept my determination that this evidence was not relevant to the matter under dispute.

The landlord repeatedly pointed out that they treated the tenants with kindness, but this kindness was not appreciated nor reciprocated by the tenants. The landlord stated that the tenant's conduct was a factor in their decision to issue the Two Month Notice to End Tenancy for Landlord's Use. The landlord freely admitted that they did not move into the home after evicting the tenants for this stated purpose.

Despite cautions to cease commentary that was not material to the hearing, the landlord persisted in testifying at length about the tenant's hostile treatment of the landlord and multiple violations of the Act and agreement during the tenancy. I

#### **Date Rent is Due**

The landlord testified that, under the tenancy agreement, the rent was due and payable mid month because the tenant had originally moved into the unit in mid

month when the tenancy started. No copy of the tenancy agreement was in evidence.

The tenant argued that the rent was due and payable on the first day of each month. The effective date of the 2-Month Notice issued by the landlord supports the tenant's testimony.

Based on the evidence I find on a balance of probabilities that the tenant's rent was to be paid on or before the first day of each month.

### **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was a copy of a Two Month Notice to End Tenancy for Landlord's Use dated February 1, 2014 and effective March 31, 2014. The Notice indicates 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 and landlord testified that the tenants did not pay rent due on March 1, 2014. but vacated the unit early and left by on March 17, 2014.

In regard to the monetary claim for compensation equivalent of one month rent, under section 51(1) of the Act, the tenant testified that this compensation was supposed to be paid under the Act and is therefore owed.

The tenant testified that after they received the notice and moved, they observed that, instead of moving into the unit as per the Two Month Notice to End Tenancy for Landlord's Use, the landlord placed the property up for sale. The tenant's position is that, because the unit is not being used to house the landlord or a close family member of the landlord, that the tenant is therefore entitled to be paid the equivalent of two months rent under section 51(2) of the Act.

The landlord acknowledged that they did not move into the unit. However, according to the landlord, notwithstanding section 51(2) of the Act, the tenant is not entitled to be paid the equivalent of 2 months rent and the landlord disagrees with the claim.

### **Analysis**

#### **Equivalent of One Month Compensation**

In regard to the tenant's claim for compensation based on the Two Month Notice to End Tenancy for Landlord's Use, I find that section 49 of the Act states that a landlord may end a tenancy for landlord use by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 51(1) of the Act states that any 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.

- A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

I find that the tenant did withhold the \$1,200.00 for March 2014 and therefore was already paid the equivalent of one month compensation. However, the tenant only remained in the rental unit for approximately half the month of March and returned the key to the landlord on March 17, 2014.

#### Further compensation for Vacating Earlier

Section 51(2) of the Act states that a tenant who receives a 2-Month Notice under section 49 of the Act is entitled to leave earlier and would only have to pay rent applicable to the period prior to vacating.

I find that this tenant chose to leave earlier and vacated on March 17, 2014. Therefore, I find that the tenant is entitled to receive a further refund of half a month rent in the amount of \$600.00 because the tenant did not stay for the entire month.

#### Compensation for Landlord's Failure to Use Unit for Stated Purpose

Section 49(3) provides that a landlord is entitled to end a tenancy in respect of a rental unit if the landlord or close family member intends to reside in the unit.

I accept the testimony of both the landlord and the tenant that, despite terminating the tenancy for the above reason, the landlord did not move into the unit.

Section 51(2) of the Act states that in addition to the amount payable under section 51(1), the landlord must pay the tenant an amount that is the equivalent

of two months rent payable under the tenancy agreement if 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.

In this instance I find that , although the landlord's stated intent was to use the home for the landlord or a close family member, the landlord did not comply with this stated intent but placed the home for sale.

Accordingly I find that the tenant is therefore entitled to receive additional compensation from the landlord in the amount of \$2,400.00 pursuant to section 51(2) of the Act, because the landlord did not use the rental; unit for the stated purpose indicated in the One Month Notice to End Tenancy for Cause.

Based on the testimony and evidence, I find that the tenant is entitled to compensation in the amount of \$3,050.00, comprised of \$600.00 refund of one half a month rent for leaving earlier than the effective date of the Notice, \$2,400.00 for the equivalent of two month's rent under section 51(2) of the Act and the \$50.00 cost of the application.

This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is granted a monetary order under sections 50(1) and 51(2) of the Act for the landlord's termination of the tenancy for landlord's use.

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: September 16, 2014

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Residential Tenancy Branch

