



# 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 a tenant's application for a Monetary Order for compensation provided to tenants under section 51(2) of the Act. 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.

The application before me indicated there were two co-tenants; however, I determined that only one of the applicants signed the tenancy agreement. Accordingly, I determined the other applicant, who resided in the rental unit with the tenant, was an occupant and I excluded his name as a party to this dispute with consent of the applicants.

### Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to two months of rent as provided under section 51(2) of the Act?

### Background and Evidence

The six month fixed term tenancy commenced January 15, 2015 and upon the expiry of the fixed term the tenancy was set to continue on a month to month basis or another fixed length of time. The monthly rent of \$1,700.00 was due on the 15<sup>th</sup> day of every month. The rental unit provided to the tenant was an unfurnished one bedroom unit.

On May 26, 2015 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property indicating the reason the landlord wanted to end the tenancy was because "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 vacated the rental unit on or about July 4 or 5, 2015.

Approximately one week after moving out the tenant saw an on-line advertisement for the rental unit indicating it was available for rent on July 15, 2015 for the monthly rent of \$2,500.00 including furnishings.

The landlord testified that the advertisement incorrectly identified the wrong unit number and that the advertisement was actually for the unit next door that is owned by the landlord's mother. The landlord testified that she and her daughter moved into the rental unit on or about July 7, 2015 and lived there until October 14, 2015 while renovations were taking place at her two-bedroom condominium. During this period of time the landlord became engaged and the landlord and her fiancé decided that they needed the space that the two bedroom condominium provided. The landlord testified that the rental unit was re-rented starting October 15, 2015 for \$2,500.00 including furniture.

### Analysis

Where a tenant receives a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act or in bad faith.

The tenant is seeking compensation pursuant to section 51(2) of the Act and the issue of compensation payable under section 51(1) was not raised by the tenant. Accordingly, the issue for me to determine is whether the tenant is entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

(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...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[my emphasis added]

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenant. To illustrate my reason for this finding, a landlord may end a tenancy for landlord's use where the unit is to be demolished and in such cases paragraph (b) would not apply and paragraph (a) would be most applicable.

In this case, the landlord indicated the reason for ending the tenancy was so that she or her spouse or a close family member could occupy the rental unit. So as to dissuade landlords from ending a tenancy for an ulterior motive and occupy the rental unit for a brief period of time before re-renting the unit, I find the application of (b) is most appropriate where the reason for ending the tenancy is where the landlord indicated the landlord or close family member would occupy the rental unit.

The landlord claims to have occupied the rental unit starting from July 7, 2015. If that were the case, I find the landlord was obligated to continue occupation, and not re-rent it, until January 7, 2016 or later. Since the landlord acknowledged that she re-rented the unit starting October 15, 2015 I find the landlord did not occupy the rental unit and did not use it for the stated purpose for at least six months. Therefore, I find the tenant is entitled to additional compensation from the landlord as provided under section 51(2) of the Act.

Although the landlord submitted that her personal relationship changed after moving into the rental unit and this is the reason she did not occupy the rental unit longer, there is no exemption from the requirement to pay the tenant compensation under section

51(2). Therefore, I find the requirement to pay the tenant compensation continues despite a change in the landlord's personal circumstances.

Given the tenant's success in this application I further award the tenant recovery of the \$50.00 filing fee paid for this application.

Provided to the tenant is a Monetary Order in the total amount of \$3,450.00 to serve upon the landlord and enforce as necessary. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

### Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the sum of \$3,450.00 to serve upon the landlord and enforce as necessary.

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: January 28, 2016

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Residential Tenancy Branch