



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed that the landlord served a Two Month Notice to End Tenancy for landlord's use of the property dated January 29, 2016 to be effective April 1, 2016 and the tenant vacated on March 30, 2016. They confirmed the tenant served this application by registered mail. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant with double the rent pursuant to sections 49 and 51 as the landlord did not use the unit according to his stated purpose; and to recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and he is entitled to double the monthly rent pursuant to section 51 of the Act?

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 he had vacated pursuant to the section 49 Notice and the landlord did not use the house for his stated purpose. He said he drove by several times and observed the house vacant and then being demolished. The tenant had lived there for over 20 years; his rent was \$1210 a month. He received a free month's rent pursuant to the section 49 Notice and his security deposit was handled satisfactorily.

The landlord's daughter gave evidence. She said that she and her husband had been living in a 600 sq. ft. condo and she asked her father if she might move into the house. The plan was always to demolish the house but in December 2015, the City told them that it could take up to a year to get permits so she told her father they would move into

the house while they waited as it was better than a small condo. She said the tenant knew of their intentions for he allowed testers in to test for asbestos in October 2015. She said they got the keys off the tenant on April 3, 2016 and then the City called and said the permits were available so they started construction in May 2015.

She said they were unsure which box to check in the Notice to End Tenancy for if they checked the box that they were going to demolish the house, they needed to have the permits and the City could not give them a time when they might have the permits. She said there is a gap in the Act to allow persons to end a tenancy to get possession to start building as soon as permits come through.

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:

Tenant's compensation: section 49 notice

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.

As I explained to the landlord in the hearing, we did not doubt that he had good faith in ending the tenancy for his daughter had plans for the property. However, it seems that due to circumstances beyond their control (uncertain timing of permits), family members

never moved in and occupied the property and this was the stated purpose in the section 49 Notice to End Tenancy. In other words, they did not do what they stated. I find section 51 (2) entitles the tenant to compensation of two months rent (\$1210 x 2= \$2420).

Conclusion:

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

Two months rent (1210x2)	2420.00
Filing fees	100.00
Total Monetary Order to Tenant	2520.00

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: November 30, 2016

Residential Tenancy Branch