



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction and Preliminary Matter

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested a monetary order pursuant to sections 52 and 67 of the *Residential Tenancy Act*.

The hearing originally occurred by teleconference on October 24, 2016. At that time, it was apparent the parties had not properly served their evidence on the other, and neither party submitted a copy of the 2 Month Notice to End Tenancy for Landlord's Use which. I adjourned the hearing to allow timely exchange of evidence and the hearing reconvened on December 15, 2016.

Both parties appeared at the reconvened hearing on December 15, 2016 and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Aside from the issues which arose on the first day of the hearing, the parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Tenant entitled to compensation equivalent to two months' rent pursuant to section 51 of the *Residential Tenancy Act*?

### Background and Evidence

The subject rental unit is a basement suite in the Landlord's home.

Introduced in evidence was a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on March 18, 2015 (the "Notice"). The reasons cited on the Notice were as follows:

*"The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."*

The Tenant alleges that the Landlord did not use the rental unit for the stated purpose, and in fact, evicted her so that her friend could live in the rental unit. She further alleged that the renovations were not so extensive that the rental unit needed to be vacant and that, the Landlord's friend moved in before the renovations were completed.

The Landlord submitted that the renovations occurred from April 15, 2015 to May 20, 2015. She stated that although she expected permits would be required, none of the renovations required a permit as the plumbing was replaced, not repositioned. She further stated that although permits were not required, the renovations were so extensive that the rental unit was not habitable during that time.

In terms of the renovations, the Landlord testified as follows:

- she added sound proof insulation to the ceiling in the bedroom and living room, as well as replacing 350 square feet of drop ceiling in the living room and replacing the bedroom ceiling tiles;
- she removed the panelling on the "south wall", where a leak had occurred and replaced it with new drywall;

- she removed 350 square feet of carpeting and installed laminate flooring;
- she redid the kitchen plumbing;
- she replaced the laundry plumbing and vented the pipes with new pipes; and,
- she replaced the flooring in the living room.

The Landlord submitted photos of the rental unit as well as invoices from the contractors who completed the work as evidence of the above renovations. The invoice from the plumber confirms the floor was jack-hammered and the drain lines for the laundry room and kitchen sink were rebuilt and re-vented.

The Landlord testified that her friend, “A”, moved into the spare room in the upstairs unit on April 3, 2015 because her parents had moved into an apartment that did not allow dogs. The Landlord also stated that A, did not have a job at the time she moved in with the Landlord. The Landlord further testified that when the renovations were completed and A. was re-employed, she moved into the rental unit. She denied this was the original plan, noting that she would not have let her friend move into the rental unit when she was unemployed and unable to pay rent. She also denied that her friend moved into the rental unit before the renovations were completed and stated she moved into the rental unit on June 1, 2016.

### Analysis

The Tenant claims the rental unit was not used for the purpose stated on the Notice, and therefore claims two months’ compensation pursuant to section 51(2) of the *Residential Tenancy Act*, which reads as follows:

#### **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.

(1.1) 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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

- (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.

The Tenant alleges the renovations were not so extensive that vacant possession was required, and that in reality the Landlord issued the Notice so her friend, A. could move into the rental unit. In essence, the Tenant is calling into the Landlord's good faith in issuing the Notice.

The time for the Tenant to dispute the Notice was 15 days after service of the Notice. The validity of the Notice is not an issue for me to determine at this time.

The question before me in the within application, is "did the Landlord take steps to accomplish the stated purpose for ending the tenancy as set out in the Notice within a reasonable period of time after the effective date of the notice?"

After careful consideration of the evidence before me, and on a balance of probabilities I find that the Landlord has taken steps to accomplish the stated purpose for ending the tenancy as set out in the Notice. I accept the Landlord's evidence that she was surprised to see that the bathroom renovation would not be as extensive, as the problem with the drainage was a removable blockage. I further accept her evidence that the renovations were extensive and occurred over a six week period. The evidence submitted by the Landlord, including photos and receipts, confirms the Landlord took steps to accomplish the renovation as set out in the Notice.

Accordingly, I dismiss the Tenant's claim for compensation pursuant to section 51(2).

### Conclusion

The Tenant failed to prove the Landlord had not taken steps to accomplish the stated purpose for ending the tenancy as set out in the Notice within a reasonable period of time after the effective date of the notice. The Landlord renovated the rental unit as she

indicated was her intention on the Notice. The Tenant's claim for compensation pursuant to section 51(2) 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: January 13, 2017

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Residential Tenancy Branch