



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, OLC, O, FF

### **Introduction**

This hearing was originally convened November 07, 2016: adjourned to allow the tenant to submit evidence and now reconvened. The proceeding deals with an Application for Dispute Resolution filed by the tenant May 06, 2016 seeking a Monetary Order for money owed or compensation for loss under the Act, regulation, or tenancy agreement and to recover the filing fee from the respondent.

Both parties participated in the conference call hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving the evidence of the other as also submitted to this hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the tenant entitled to monetary compensation, and if so in what amount?

### **Background and Evidence**

The relevant evidence is as follows. The tenancy ended in 2015 pursuant to a 2 Month Notice to End Tenancy. On October 30, 2015 the tenant was given a 2 Month Notice to End Tenancy (the Notice, 2 Month Notice) with an effective date of December 31, 2015 pursuant to Section 49(5). The Notice states:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant did not dispute the Notice within the legislated prescribed time to do so and subsequently vacated the rental unit ending their tenancy early pursuant to Section 50 of the Act in mid-December, 2015.

The tenant now claims compensation from the purchaser pursuant to Section 51(2) and for loss in the sum of \$23,888.54 comprised of costs for having to move from the unit and to mitigate a higher rental market. Following receipt of the 2 Month Notice the tenant came upon an online listing for the subject rental unit requesting a higher rent than was then payable by the tenant. They brought this information to the attention of their landlord. The listing was subsequently removed from the online site. The tenant argued the purchaser informed the landlord to issue the 2 Month Notice in bad faith. The tenant argued the online listing is proof which brings into question the purchaser's good faith intention to accomplish the stated purpose of the 2 Month Notice: to occupy the unit. The tenant thinks that the purchaser withdrew the listing and their attempts to rent out the unit to avert legal ramifications. The tenant provided a copy of the listing for the rental unit appearing on Craigslist in November 2015.

The purchaser does not deny they placed an online listing on Craigslist for the unit and that it was intentional to illicit reaction from potential renters, in order to test the market rent for the unit. The parties agreed the listing was short-lived with the purchaser claiming it was for 1 day, during which they received one unrealistic response before ending the listing. The purchaser claims a co-worker crafted the listing from existing ones for the same residential property and photo images from the sale listing. The purchaser testified they placed the listing without intention to rent out the unit, partly because of curiosity as they claim the unit is unique within the residential property. The purchaser testified their intention was always to occupy the rental unit upon completion of its sale and stated they regret causing mistrust by their actions. They testified taking possession of the unit soon after completion of the sale, furnished the unit and still personally occupy the unit. The purchaser provided evidence in the form of monthly invoices for 2 utilities both in the name of the purchaser, with billing dates of January, April, June and August 2016.

### **Analysis**

On preponderance of the evidence and on a balance of probabilities I find as follows.

I accept the tenant's view of the purchaser's pre-possession conduct, and their explanation for their conduct, as casting doubt on the purchaser's good faith intention to accomplish their stated purpose and occupy the rental unit. However, I find the defining test in this matter is whether the purchaser ultimately acted in accordance with their instructions to the landlord pursuant to Section 49(5) of the Act, and did what they stated they would do and were obligated to do upon taking possession of the rental unit.

I find that Section 49(8) of the Act operates to afford a tenant 15 days to dispute the validity or motive behind the issuance of a 2 Month Notice; after which the tenant must vacate by the effective date of the Notice.

I find that the Act then may operate to ascertain the purchaser's conduct in respect to compliance with the stated purpose of the Notice. After the effective date of the Notice to End if the landlord's stated purpose is brought into question the burden is the applicant's to show the purchaser has not followed through and acted in accordance with their stated purpose for seeking to end the tenancy as provided by Section 49(5) so as to occupy the rental unit. The purchaser may then provide evidence they acted in accordance with their stated purpose. If it is established the purchaser has not taken steps to accomplish the stated purpose pursuant to Section 49(5) within a reasonable period after the effective date of the 2 Month Notice, or, the rental unit is not used for that stated purpose for at least 6 months thereafter, then the tenant is entitled to compensation pursuant to Section 51(2) in the amount of double the rent under the tenancy agreement. I find the Act does not provide for additional compensation in the event a purchaser fails to accomplish the stated purpose for ending the tenancy under Section 49.

I find the tenant has not established that the purchaser did not accomplish the stated purpose for ending the tenancy. I find the purchaser has provided sufficient evidence that shortly following the effective date of the Notice they began occupying the rental unit and did so for at least 6 months thereafter. As a result, I find the tenant has not established entitlement to compensation from the purchaser. As further result of all the above **I dismiss** the tenant's application in its entirety.

### **Conclusion**

The tenant's application is dismissed in its entirety, without leave to reapply.

**This Decision is final and binding on both parties.**

*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 04, 2017

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Residential Tenancy Branch

