



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNDC, FF

### Introduction

This decision deals with monetary applications filed by each party against the other party. The tenant applied for compensation payable under section 51(2) of the Act where a landlord does not use a rental unit for the purpose stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord applied for compensation for cleaning costs and damage to the rental unit or property.

The proceeding was held over three dates. An Interim Decision and Notice of Adjourned Hearing were sent to both parties after the first and second hearing dates. The Interim Decisions should be read in conjunction with this decision.

After the second hearing date the tenant's claim against the landlord had been heard and the landlord had responded to the tenant's claim. The landlord's claims were set to be heard on the third hearing date of March 8, 2017; however, there was no appearance by or on behalf of the landlord. The tenant appeared on the third hearing date and was prepared to respond to the landlord's claims against her. On March 8, 2017 the teleconference call remained open and was monitored for 13 minutes while waiting for an appearance on part of the landlord. Since there was no appearance on part of the landlord on March 8, 2017 I dismissed the landlord's claims against the tenant.

In light of the above, the remainder of this decision pertains only to the tenant's claim against the landlord.

### Issue(s) to be Decided

Is the tenant entitled to compensation payable under section 51(2) of the Act?

### Background and Evidence

The tenancy started in October 2001 and at the end of the tenancy the tenant had been paying rent of \$1,360.00 on the first day of every month. The tenancy came to an end pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The 2 Month Notice had a stated effective date of August 31, 2015; however, the tenant requested and the landlord agreed to give the tenant more time to vacate the rental unit. The tenant moved out of the rental unit in the first few days of September 2015 although the exact date was not clear.

The reason for ending the tenancy, as stated on the 2 Month Notice, is that “the rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, and child) of the landlord or the landlord’s spouse”.

The tenant submitted that when the landlord served her with the 2 Month Notice the landlord had orally told her that she would be moving in to the rental unit. However, after her tenancy ended the landlord did not move into the rental unit. Rather, minor renovations were undertaken and the unit remained vacant until new tenants moved into the unit in the fall of 2016. The tenant saw an on-line advertisement for the rental unit in November 2015 and/or December 2015 listing the property for rent for approximately double the monthly rent she had been paying. The tenant provided a print-out of the advertisement as well as a letter written by her former next door neighbour. The letter, dated July 21, 2016, provides that it appears that nobody is living in the rental unit.

The landlord submitted that after the tenancy had ended she determined the unit was not in a condition for her to move in so she undertook repairs and renovations and dealt with a rodent infestation and junk removal. In late October 2015 the landlord was offered a job working overseas starting in February 2016 so she placed an advertisement to rent the house. The landlord then changed her mind about taking the job and removed the advertisement. The landlord resumed making repairs and renovations to the property. The landlord moved some furniture into the rental unit in January 2016 and used it for her own purposes from time to time. The landlord has photographs of her furniture in the rental unit and utility bills to show the utilities were in her name. The landlord acknowledged that starting in September 2016 she rented the unit to a personal friend. Since the landlord had sole occupation of the rental unit for at least six months after the tenancy ended the landlord is of the position the tenant is not entitled to further compensation

### 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 as provided under section 51 of the Act.

Under section 51(1) of the Act, a tenant entitled to receive the equivalent of one month of rent as compensation for receiving a 2 Month Notice. Should the landlord fail to fulfill the purpose stated on the 2 Month Notice the landlord must pay the tenant additional compensation in an amount equivalent to two months of rent under section 51(2) of the Act. Section 51(2) is the provision under the Act that the tenant relies upon in making her claim against the landlord.

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.

Under section 49 of the Act, there are multiple reasons for a landlord to end a tenancy for landlord's use. Accordingly, the applicability of paragraphs (a) or (b) above will depend upon the stated purpose for ending the tenancy. Where a landlord has ended a tenancy so that the landlord or close family member may occupy the unit, I find it reasonable to apply paragraph (b), meaning the landlord or close family member of the landlord must occupy the rental unit for at least six months after the tenancy ended to avoid paying compensation under section 51(2).

The reason for ending the tenancy, as stated on the 2 Month Notice served upon the tenant in this case, was that the rental unit would be occupied by the landlord, the landlord's spouse or close family member of the landlord or landlord's spouse. Accordingly, in order for the tenant in this case to receive additional compensation under section 51(2), I must be satisfied that the rental unit was not used for this purpose for at least 6 months after the tenancy ended.

The tenant implied that when the landlord gave her the 2 Month Notice the landlord may not have been her true intention. The landlord's intentions or oral statements to the tenant at the time of serving a 2 Month Notice are not relevant to this claim. Rather, a landlord's intentions are only relevant where the tenant has filed to dispute the 2 Month Notice.

It is important to point out that the landlord, landlord's spouse or close family member were to "occupy" the rental unit and the Act does not use the word "reside" or "live in". Meaning must be given to the words actually used in the legislation. "Occupy" and "reside" have different meanings. Since the Act does not require the landlord to "reside" in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant. As for the meaning of "occupy", the Act does not define the word "occupy" or "occupied" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

Based upon the undisputed evidence before me, during the year following the tenancy the rental unit was undergoing repairs and/or renovations and no other person took possession of the rental unit from the landlord. Since no other person took possession of the rental unit for nearly

a year after the tenancy ended, I am satisfied that the landlord occupied the rental unit for at least six months starting in September 2015.

In light of the above, I am satisfied the landlord fulfilled the stated purpose on the 2 Month Notice and I find the tenant is not entitled to compensation under section 51(2). Therefore, I dismiss her claim against the landlord.

### Conclusion

The tenant's claim against the landlord is dismissed.

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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: March 17, 2017

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Residential Tenancy Branch