



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNL, MNDC, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 26, 2016 ("2 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 2 Month Notice, pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and her agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that he was the landlord's son and had authority to speak on her behalf at this hearing, as he is also the co-owner of this rental unit with her. The landlord and her agent are the purchasers of this rental unit and are referred to as "landlord" and "landlord's agent" for ease of reference in this decision. This hearing lasted approximately 68 minutes in order to allow both parties to fully present their submissions.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

At the outset of the hearing, the tenant confirmed that he did not require more time to cancel the 2 Month Notice, cancellation of the 2 Month Notice, or orders for the landlord to comply. He

stated that he had already vacated the rental unit pursuant to the 2 Month Notice. He claimed that he was only seeking two month's rent compensation, not three, as he had already received one month's free rent as per the 2 Month Notice, from the former landlord.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act* and moving, work and cleaning expenses?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began with the former landlord on January 1, 2011 and ended on October 15, 2016. Monthly rent of \$1,590.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the former landlord returned the deposit to the tenant. A written tenancy agreement was signed by the tenant and former landlord and a copy was provided for this hearing.

The landlord's agent testified that he and the landlord purchased the rental unit and obtained possession on October 31, 2016, after the tenant vacated on October 30, 2016. The tenant provided a copy of the "tenant occupied property - buyers notice to seller for vacation possession" form, dated August 17, 2016. He said that he received this notice from the former landlord. The landlord and her agent both testified that they signed this form confirming that they intended to occupy the rental unit and wanted vacant possession of the unit by October 30, 2016.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$1,590.00, totalling \$3,180.00, plus recovery of the \$100.00 application filing fee. The tenant claimed that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, the tenant is entitled to compensation. The tenant also claims for a moving truck rental of \$100.36, a moving box purchase of \$163.49, two days off work to move of \$830.00, and eight hours to clean the rental unit before vacating at \$160.00. The tenant said that because he was forced to leave the unit for an improper purpose, that he is entitled to the above additional expenses.

The tenant claimed that he moved out pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The reason indicated on the notice is:

*All of the conditions for the 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 landlord's agent said that the former landlord issued the 2 Month Notice because the landlord's agent wanted to move into the rental unit with his girlfriend. He claimed that after renovations were completed to the rental unit for about two weeks, he moved in around mid-November 2016. He provided photographs of the renovations required and being completed. He said that he continues to live in the rental unit with his girlfriend and that he pays for all of the gas and hydro utilities, which are in his name with the rental unit address. He provided copies of the gas and hydro bills ranging from December 2016 to May 2017. He also provided copies of his current driver's license and provincial government election voting card from May 2017, with his name and the rental unit address on it. The landlord confirmed all of the above information when she testified. She claimed that she thought her agent moved into the unit around the end of October or early November 2016.

The tenant claimed that the landlord intended to re-rent the unit to new tenants after he vacated in October 2016. He stated that he does not know whether the unit was actually re-rented or whether the landlord moved into the unit. He explained that he has seen vehicles at the rental unit. He said that he found an online website advertisement for re-rental of the unit with the landlord's agent's nickname, phone number and coloured photographs of the rental unit after it had been renovated by the landlord. He stated that only someone with access to the unit after the renovations were completed could have taken and posted those photographs online. He also provided photographs of the realtor listing while the rental unit was still up for sale, showing the difference in the appearance of the rental unit before the renovations were completed in the online advertisement.

The landlord's agent disputed the tenant's claims, stating that the tenant falsified the website advertisement for the rental unit and provided his phone number because he had previously given the phone number to the tenant's wife. The landlord's agent provided a copy of an advertisement that he posted himself as a "test advertisement" and pointed to differences between the tenant's advertisement and his test advertisement. He said that the tenant's advertisement lacked important information and was not available online. The tenant said that he did not falsify the advertisement for the rental unit, it can be printed in different views so as to lose certain information, and that once a posting is removed it is no longer available online.

### Analysis

Section 49(5) of the *Act* reads, in part, as follows:

- (5) *A landlord may end a tenancy in respect of a rental unit if*
- (a) *the landlord enters into an agreement in good faith to sell the rental unit,*
  - (b) *all the conditions on which the sale depends have been satisfied, and*

*(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*

*(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*

Section 51(2) of the Act establishes a provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

*51 (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.*

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. The landlord and her agent signed a buyers notice to seller for vacant possession on August 17, 2016. The tenant vacated the rental unit pursuant to the 2 Month Notice, which was issued by the former landlord, so that the landlord's agent could move in to the rental unit. The landlord's agent is the close family member, as the son of the landlord, as well as a co-owner of the rental unit. The landlord's agent moved into the rental unit with his girlfriend around mid-November 2016, after completing renovations to the rental unit. The landlord provided photographs of areas requiring renovations in the unit, as well as the landlord painting inside the rental unit.

The landlord's agent provided a copy of his current driver's license and voting card from May 2016 with the rental unit address on both. The landlord's agent provided copies of gas and hydro bills for the rental unit as well as banking information to confirm payment of the above bills ranging from December 2016 to May 2017. I find that together with the documentary evidence, the landlord clearly established that the rental unit was used for the purpose as stated on the 2 Month Notice.

Regardless of whether the rental unit was advertised for re-rental, the landlord did not re-rent the unit to anyone, during the six month period after the tenant vacated or thereafter. It is the action and purpose of the landlord and her agent, rather than the intention, that is evaluated here.

Therefore, I find that the tenant is not entitled to compensation of double the monthly rent under section 51(2)(b) of the *Act*. I further find that the tenant is not entitled to moving, work or cleaning expenses as a result of having to vacate the unit because the 2 Month Notice was issued for a proper purpose. In any event, the tenant provided insufficient documentary proof of the above expenses.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: June 16, 2017

---

Residential Tenancy Branch