



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GIUSTI ENTERPRISES LTD. INC. NO BC0703447  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and the landlord agreed he had received it as stated. I find the documents were served pursuant to section 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 their stated purpose.

### **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 they are 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 undisputed evidence is that the tenancy commenced September 1, 2015 on a fixed term to August 31, 2016 and could continue month to month thereafter. Rent was \$2100 a month and a security deposit of \$1050 was paid. The tenant said she received the Two Month Notice to End Tenancy dated July 25, 2016 to be effective September 30, 2016. The two month Notice stated the reason:

*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.*

She vacated on August 31, 2016 and received a refund of one month's rent pursuant to sections 49 and 51 and the refund of her security deposit. She provided evidence that title transferred on September 28, 2016 to the new owner but said the new owner had not occupied the unit but had renovated it and listed it for sale on April 4, 2017. She asks for double the rent refunded in accordance with section 51(2) of the Act.

The new owner/landlord said they had intended in good faith to occupy the rental unit. It needed a lot of work and he planned to renovate and then move in. However, he and his

partner split up and he could not afford to carry it on his own. He honestly admitted that he never occupied the rental unit. He lives with his parents. He is dismayed that the tenant would apply to get more money as her lease ended on August 31, 2016 and he had given her an extra month to move.

In evidence is the registered mail receipt, the Notice to End Tenancy, the new listing agreement, photos, transfer of title and an Income Tax case. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**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.*

(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.*

I find the weight of the evidence is that section 51(2) applies to this case. The Notice to End Tenancy was issued for the purchaser stated they intended to occupy the unit. While I find the purchaser credible that he intended to occupy the unit at the time he bought it, I find section 51(2) (b) states the rental unit **must be used** for the stated purpose (emphasis mine). I find the evidence is that the purchaser did not occupy the unit but renovated it and sold it. I find the tenant is entitled to compensation of double the monthly rent as provided in section 51(2) (b).

**Conclusion:**

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

|                                       |                |
|---------------------------------------|----------------|
| Rent \$2100 x 2                       | 4200.00        |
| Filing fee                            | 100.00         |
| <b>Total Monetary Order to Tenant</b> | <b>4300.00</b> |

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 14, 2017

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Residential Tenancy Branch