



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDC, MNSD, OLC

### Introduction

The tenants apply to recover the penalty prescribed by s. 51 of the *Residential Tenancy Act* (the “Act”) imposed where a landlord or purchaser fails to carry out the stated purpose for a two month Notice to End Tenancy. They also seek to recover a security deposit and for moving costs and loss of wages.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the respondent violated s. 51 of the *Act* entitling the tenants to the prescribed penalty amount and damages? Is he responsible to return a security deposit?

### Background and Evidence

The rental unit is a two bedroom “plus den,” high-rise, condominium apartment. The tenants Mr. C. and Mr. Mc.L. took possession of it about five years ago from a landlord who is not a party to this proceeding. In January 2016 the most recent tenancy agreement was prepared between that landlord and Mr. C. and Mr. McL. The applicant Mr. S. arrived about a month later and was added to the written agreement as a third tenant.

The rent was \$2250.00 per month. The original landlord holds a \$1125.00 security deposit.

In March 2017 the tenants received a two month Notice to End Tenancy from their original landlord purporting to end the tenancy May 31, 2017. The stated reason in that

Notice was that all of the conditions for the sale of the rental unit had been satisfied and the purchaser (the respondent Mr. K.) had asked the landlord, in writing, to give the Notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

Those stated grounds are lawful grounds to end a tenancy under s. 49 of the *Act*.

The tenants did not challenge the Notice. They moved out by May 29, 2017. Mr. C. testifies that he lost work in order to move and incurred the cost of a trailer or trailers used to facilitate the move.

The respondent Mr. K. confirmed that his purchase closed and possession passed to him from the original landlord on May 31, 2017. He says his wife did not find the premises suitable and so in the first week of June he painted the apartment, changed the carpeting to laminated flooring, renovated some of the baseboard and advertised it for rent at a monthly rent of \$3500.00. He found a new tenant for the apartment effective July 1, 2017 for a one year term at the \$3500.00 per month rent.

### Analysis

Section 51 of the *Act* 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, 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 “stated purpose” of the Notice was for the purchaser to occupy the rental unit. It is obvious that the respondent purchaser Mr. K. has failed to do so for a period of six months. He conveyed away the right to possession and thus, occupation of the rental unit to his tenant within a few days. He is in clear violation of s. 51 and is accountable as a purchaser to the tenants for an amount equivalent to double their rent, that is: \$4500.00.

Regarding the tenants’ claim for lost wages and out of pocket expenses I must dismiss that portion of the claim. The tenants have provided no corroboration of the two claims. Such corroboration, in the form of employment records and receipts would be easy to

obtain. The respondent Mr. K. has no basis upon which to challenged the tenants' assertions about these items.

Regarding the tenants' claim for return of their security deposit, I find that the respondent purchaser Mr. K. is not responsible for the deposit money. He was at no time the tenants' landlord. Their tenancy ended when his purchase completed.

The tenants must seek recover of the deposit money from their original landlord. I would refer them to s. 38 of the *Act* in that regard and the necessity of providing their landlord with a forwarding address in writing.

### Conclusion

The tenants are entitled to a monetary award of \$4500.00 against the respondent purchaser Mr. K.. They will have a monetary order accordingly. There is no claim for recovery of any filing fee.

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: September 21, 2017

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Residential Tenancy Branch