



# 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 convened in response to an application by the tenant for 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.

I accept the tenant's evidence that despite the purchaser having been served with the application for dispute resolution, notice of hearing and evidence by *registered mail* in accordance with Sections 88 and 89 of the Residential Tenancy Act (the Act) the purchaser did not participate in the conference call hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

### **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 May 31, 2017 pursuant to a 2 Month Notice to End Tenancy. During the tenancy the payable rent was \$1050.00. On March 31, 2017 the tenant was given a 2 Month Notice to End Tenancy (the Notice, 2 Month Notice) with an effective date of May 31, 2017 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 prior to the effective date of the notice.

The tenant claims compensation from the purchaser pursuant to Section 51(2) and additionally for arbitrary costs in the sum of \$772.94 comprised of moving and storage charges.

Following receipt of the 2 Month Notice and subsequent to the effective date of the notice the tenant came upon online listings for the subject rental unit on June 30, 2017 advertising both floors of the house and effectively the entire house for rent at higher amounts than was paid by the tenant. The tenant submitted the online listings into evidence, including the online contact information indicating that it belonged to the purchaser of this matter, as well as the associated photo images of the subject rental unit. The tenant argued the online listings are proof bringing into question the purchaser's conduct vis a vis their obligation to accomplish the stated purpose of the 2 Month Notice: to personally occupy the unit.

### **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 conduct as casting doubt on the purchaser's obligation to accomplish their stated purpose to personally occupy the rental unit. I find that Section 51(2) states as follows (**emphasis mine**).

#### **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.

**(2)** In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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 that the Act operates to ascertain the purchaser's conduct in respect to compliance with the stated purpose of the 2 Month Notice to End. After the effective date of the Notice to End if the purchaser'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 prescribes the remedy for a breach by the purchaser in this type of matter, and does not provide for additional compensation in the event a purchaser fails to accomplish the stated purpose for ending the tenancy under Section 49. In this matter I find that the *reasonable time* required by Section 51(2)(a) is one month following the effective date of the notice and the tenant vacating the rental unit.

In the absence of the purchaser, whom was duly notified as to the case against them, I find the tenant has provided sufficient evidence establishing that the purchaser did not accomplish the stated purpose for ending the tenancy. As a result, I find the tenant has established entitlement to compensation from the purchaser in the amount equivalent to 2 month's rent in the sum of \$2100.00. As the Act does not prescribe compensation for the arbitrary costs of the tenant or other compensation I must dismiss the balance of the tenant's claim, without leave to reapply. As the tenant was successful in their application they are entitled to recover their filing fee of \$100.00 for a sum award of **\$2200.00**.

### **Conclusion**

The tenant's application is granted in the above terms.

**I grant** the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$2200.00**. If necessary this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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 13, 2018

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Residential Tenancy Branch