



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for two month’s rent pursuant to section 51(2) of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, the agent for the Landlord (the “Agent”), and the witness for the Landlord (the “Witness”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Preliminary Matters

#### **Preliminary matter #1**

At the outset of the hearing the Landlord stated that the spelling of his surname on the Application is incorrect and provided me with the correct spelling. As there were no objections from the Tenant, the Application was amended accordingly.

#### **Preliminary Matter #2**

The Tenant identified that since the filing of his Application, the legislation has changed with regards to the amount of compensation that may be sought by tenants pursuant to

section 51 of the *Act* and requested authority to amend his Application in the hearing to seeking 12 months of compensation instead of two.

I advised the Tenant that although section 4.2 of the Rules of Procedure allows for the amendment of Applications in the hearing, it pertains only to circumstances that can reasonably be anticipated. Further to this, the ability to know the case against you and provide evidence in your defense is fundamental to the dispute resolution process. As the Tenant filed his application seeking \$4,950.00, I do not find it reasonable to amend the Application in the hearing, without any prior notice to the Landlord, to increase the monetary claim to \$29,700.00. In any event, the legislative amendment referenced by the Tenant came into force on May 17, 2018, and is not retrospective. As a result, it applies only to Notices to End Tenancy served pursuant to section 49 of the *Act*, on or before 00:00:01 am on May 17, 2018. As the Tenant was served a Notice to End Tenancy in 2017, this legislative amendment therefore has no bearing on the Tenant's claim.

Based on the above, the Tenant's request for an amendment was denied and the hearing proceeded based on the original Application.

### **Preliminary Matter #3**

Although the Landlord acknowledged receipt of the Application, the Notice of Hearing, and the Tenant's evidence package by registered mail in November of 2017, the Tenant stated that he did not receive the Landlord's evidence until June 8, 2018, which is less than seven days before the hearing. The Landlord acknowledged that his evidence was not served on the Tenant but rather another occupant of the building in which the Tenant resides; however, the Tenant stated that this person is actually a Tenant in a different unit. In any event, the Tenant testified that he eventually received the Landlord's evidence from the other person and raised no objections to its acceptance and consideration in the hearing.

The Agent also raised concerns about the acceptance of some of the Tenants evidence, such as copies of cheques and photographs of mail, which he stated was illegally obtained by either the Tenant or one of the neighbors. Section 75 of the *Act* states that the rules of evidence do not apply and that the director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate and relevant to the dispute resolution proceeding.

Despite the Agents objections, I find that the evidence submitted by the Tenant directly relates to the matter before me for consideration, which is whether or not the Tenant's previous rental unit is being occupied by persons other than the Landlord and his close family members. As a result, I have accepted this evidence for consideration in this matter.

#### **Preliminary Matter #4**

Although the Witness was present at the start of the hearing, they were excluded from the proceedings until called upon to provide testimony for my consideration.

#### Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to sections 51(3) and 67 of the *Act*?

#### Background and Evidence

Both parties agreed that the Tenant resided in the property for approximately eight years and that at the time the tenancy ended, rent in the amount of \$2,475.00 was due on the first day of each month. The parties also agreed that the Tenancy ended sometime between mid-June, 2018 - July 1, 2018, as the result of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The Two Month Notice in the documentary evidence before me, dated March 7, 2017, has an effective vacancy date of June 30, 2017, and states that the reason for ending the tenancy is because the Landlord or his close family members intend, in good faith, to occupy the property.

The Tenant testified that shortly after vacating the rental unit he became aware, through communication with his previous neighbours, that the Landlord was not using the rental unit for the stated purpose for ending the tenancy in the Two Month Notice. The Tenant testified that the Landlord appeared to have done some brief renovations and was now renting out as many as 10 rooms to persons other than his close family members. In support of his testimony he submitted copies of online advertisements showing rooms for rent in the house he used to occupy, letters from witnesses and neighbours, and copies of cheques and mail sent to his previous address, all naming persons who are neither the Landlord nor his close family members.

The Tenant stated that as he used to rent the entire home from the Landlord, the Landlord was not entitled to have anyone other than himself or his close family members occupy any portion of the home for at least six months from the end of his tenancy. The Tenant stated that it is clear that the Landlord simply renovated and re-rented the home within six months of the end of his tenancy and as a result, he is entitled to compensation in the amount of \$4,950.00 which is equivalent to two months' rent.

The Agent and the Witness, who are adult children of the Landlord, both testified that at the time the Two Month Notice was served, they intended to move into the property with their parents and that some minor renovations were required in order to make the property suitable. However, both the Agent and the Witness stated that circumstances changed and they were ultimately unable to move into the rental unit. Despite the foregoing, the Agent stated that his parents, one of whom is the Landlord, actually moved into the property approximately one month after the Tenant moved out.

Further to this, the Agent acknowledged that his parents rent out rooms for homestays as they are unable to pay the mortgage themselves now the he and his brother have not moved into the property and are not contributing to the mortgage. The Agent stated that the Landlord was unaware that persons other than himself or his close family members could not occupy the property for at least six months after the Tenant vacated and requested leniency due to this oversight and the Landlord's need for the additional monthly income.

### Analysis

Section 51(2) of the *Act* states that in addition to the amount payable under subsection one, if 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 the rental unit is not used for that stated purpose for at least six 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.

While I understand and appreciate the Agent's testimony regarding the change in circumstances, the Landlord's need for additional rental income, and the Landlord's misunderstanding of the *Act*, it was clear to me from the testimony of both parties that within six months of the end of the tenancy, the property was rented to and occupied by persons other than the Landlord or the Landlord's close family members. Section 51(2)

of the *Act* clearly states that if the rental unit is not used for the stated purpose for ending the tenancy on the Two Month Notice for at least six months beginning within a reasonable period after the effective date of the Two Month Notice, the purchaser **must** pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Based on the above, I find that the Tenant is therefore entitled to \$4,950.00 (2 x \$2,475.00 in rent) from the Landlord, regardless of the reason for the Landlord's non-compliance with the stated purpose for ending the tenancy.

As the Tenant was successful in his application, I also find that he is entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$5,050.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$5,050.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 15, 2018

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Residential Tenancy Branch