



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to sections 55(2) and 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's representative JP (the landlord) confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 28, 2018, I find that the landlord company (the landlord) was duly served with this package in accordance with section 89 of the *Act*. The landlord testified that they sent the tenant a copy of their written evidence in which they outlined why the renovations had been delayed by registered mail on July 6, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that he had not received that package, but admitted that he had been out of town and had not checked his mail for some time. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with a copy of the landlord's written evidence on July 11, 2018, the fifth day after its registered mailing.

As the tenant had not had an opportunity to review or consider this written evidence, I instructed the landlord to read into the record the substantive portions of the landlord's written evidence, which had a bearing on this application. The landlord did read this information into the record.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to comply with the provisions of section 51(2) of the *Act* in using the rental suite for the purposes stated on their 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) issued on June 21, 2017 within a reasonable period of time? Is the tenant entitled to recover the filing fee for their application from the landlords?

Background and Evidence

This tenancy for a rental suite in a 13-unit rental building began on or about November 15, 2010. The tenant confirmed that he was handed the 2 Month Notice for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49 of the *Act* by the landlord's representatives on June 21, 2017. The parties agreed this tenancy ended on the basis of that 2 Month Notice by September 1, 2017.

Monthly rent by the time that the landlord issued their 2 Month Notice was set at \$902.00, payable in advance by the first of each month. Both parties agreed that the sole reason cited for the landlord's 2 Month Notice was as follows:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant...*

The tenant did not apply to cancel the landlord's 2 Month Notice and vacated the rental unit in accordance with the landlord's 2 Month Notice which took effect on August 31, 2017. The parties agreed that the landlord allowed the tenant to pay no rent for August 2017, in order to comply with the requirements of section 51(1) of the *Act*, after having issued the tenant the 2 Month Notice.

Landlord representative WA testified that 12 of the 13 residents in this building did not apply to cancel the 2 Month Notice and vacated the rental property. The other tenant was successful in their application to cancel the 2 Month Notice and subsequently advised the tenant that renovation work had not yet commenced to the tenant's rental unit by late May 2018.

Upon receiving the news from the remaining tenant that renovations had yet to commence, on May 16, 2018, the tenant applied for a monetary award of \$1,804.00, the equivalent of double the monthly rent. The tenant maintained that the landlord had not

commenced renovations or repairs, the reason cited in the 2 Month Notice within a reasonable period of time. The tenant's application was submitted pursuant to section 51(2) of the *Act*.

The landlords' sworn testimony supported by written evidence asserted that the landlord relied on advice from their real estate agent and the initial architect the landlord consulted in believing that no permits would be required from the municipality to undertake the renovations to this 13-unit rental property. The landlord encountered delays with the original architect and from the municipality, eventually having to retain a second architect to oversee this renovation. The second architect informed the landlord that permits would have to be obtained from the municipality. The landlord's representative testified that some preliminary work was started on the rental property to common areas before the end of 2017. The landlord entered into written evidence a copy of the April 12, 2018 building permit they received from the municipality. The landlord provided written evidence that substantive renovation work on this property commenced by May 28, 2018. This written evidence also revealed that the sole tenant who had remained in the rental unit following his successful application to cancel the 2 Month Notice issued to him in June 2017 was not scheduled to vacate this property until June 30, 2018.

The tenant maintained that the landlord had not obtained the necessary permits requiring his rental unit to be vacated before the landlord issued the 2 Month Notice. The tenant claimed that it did not take seven months to obtain a building permit and that the landlord had issued the 2 Month Notice without having obtained the permit needed to undertake a renovation requiring him to vacate the premises.

### Analysis

Section 51(2) of the *Act* reads in part as follows:

**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 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...*

In considering this application, I have also taken into account the following guidance provided to arbitrators in Residential Tenancy Branch (RTB) Policy Guideline 2. The relevant section of this Policy Guideline reads in part as follows:

*...If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA...has not: •*

*taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or •*

*used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),*

*the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy...*

In considering this application, I have taken into account the assertion of the landlord's representative WA that the landlords are property management experts, not construction experts, and had to rely on the advice provided to them by their realtor and the architect retained to assist with this renovation.

I do not doubt that the landlord company believes that it was an unwitting victim of bad advice provided to them by professionals in this process. Nevertheless, I do find merit in the tenant's claim that the landlord company bears the responsibility for ensuring that it had all necessary licences and permits required to undertake a renovation or repair that was deemed so extensive that it required all 13 tenants to vacate this rental property. One would expect that the property management company that owns this building would have discovered that permits to do this amount of work would have been necessary before the 2 Month Notices were issued and not many months afterwards. The landlord's lack of success in obtaining an Order of Possession against the one tenant who did apply to cancel the 2 Month Notice might have also raised warnings that the landlord needed to check with the municipality to determine if permits needed to be obtained to pursue the renovations that necessitated action to empty this building of all of its tenants. Instead, the landlord only discovered that permits still needed to be obtained after retaining a second architect, many months after the original 2 Month Notices were issued in June 2017.

While I have given regard to claims by both of the landlord's representatives at the hearing that some work did start on this rental building during 2017, neither described anything specific in the rental unit that was undertaken that would have required the tenant to vacate the rental unit. In fact, the landlord's own written evidence confirmed that the one remaining tenant has been able to continue living in this rental building until June 30, 2018.

RTB Policy Guideline 2 does not identify any rigid rule of thumb for determining how much delay is unreasonable in commencing use of the property for the purpose stated on a 2 Month Notice. I might accept that delays of this lengthy might be justifiable if they arose as a result of weather conditions, soil conditions or problems with a contractor's unexpected unavailability to undertake a major renovation of this type; however, the landlord has provided no such explanation in this case. As licences and permits are supposed to have been obtained prior to the issuance of a 2 Month Notice, I find that delays that arose as a result of the failure to have obtained what the landlord later discovered was a necessary municipal permit become the landlord's responsibility. Since a tenant in one of the other rental units has been able to remain in his tenancy for over a year since the 2 Month Notices were issued, there are questions as to whether the landlord was truly prepared to commence the renovations required to end this tenancy for landlord's use for these renovations.

Under these circumstances, I find that the tenant has demonstrated to the extent required that necessary steps were not taken by the landlord to accomplish the stated purpose for ending this tenancy under section 49 of the *Act* within a reasonable period after the effective date of the 2 Month Notice. Seven and one-half months passed between the time that this tenancy ended and the landlord even obtained the necessary building permits that should have been in place before the 2 Month Notice was issued. Substantive work that would have required the tenant to vacate his rental unit did not commence until almost nine months after he was required to vacate on the basis of his acceptance of the landlord's 2 Month Notice. I allow the tenant's application and grant the tenant a monetary Order pursuant to sections 51(2) and 67 of the *Act* in the requested amount of \$1,804.00.

As the tenant has been successful in this application, I allow him to recover the \$100.00 filing fee for his application.

### Conclusion

I allow the tenant's application and issue a monetary Order in the amount of \$1,904.00, which allows the tenant a monetary award pursuant to section 51(2) and 67 of the *Act*, and allows the tenant to recover his filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 19, 2018

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Residential Tenancy Branch