



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 IN TOWN REALTY  
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 section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both named parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent CG (the "Landlord").

As both parties were in attendance service was confirmed. The parties testified that they were each served with the other's materials. I find that the parties were each served with all of the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agree on the following facts. This periodic tenancy began in October, 2015 and ended November 30, 2017. The monthly rent at the end of the tenancy was \$2,055.00 payable by the first of each month.

The respondent is the current property manager for the owners of the rental property. The property was transferred from the previous owners (the "Sellers") to the current owners (the "Owners") in January, 2018. The Sellers issued a 2 Month Notice to End Tenancy for Landlord's Use dated October 20, 2017 on the tenant on or about that date. The 2 Month Notice states the reason for the tenancy ending as, "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 unit."

The tenant moved out by November 30, 2017, 1 Month earlier than the effective date of the 2 Month Notice. The tenant confirmed that the Sellers provided them with the equivalent of one month's rent in accordance with section 51 of the Act. The tenant testified that they discovered the rental unit being advertised for rent in January, 2018. They seek a monetary award of double the monthly rent in accordance with section 51(2) of the *Act*. In addition the tenant seeks compensation for the moving costs they incurred in the amount of \$572.25.

The parties agree that the Owners never moved into the rental unit and that it was rented out to new tenants. The landlord was not involved in the purchase and sale of the rental property but has reviewed the documentation and submitted them into written evidence. The landlord submits that the Owners never made a request, either in writing or orally, for the Sellers to issue a 2 Month Notice to the tenant.

### Analysis

Section 51(2) of the *Act* states 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.

Accordingly, I find that under the Act the purchaser, the Owners of the property, can be held liable for paying the tenant damages where steps have not been taken to accomplish the purpose set out on the 2 Month Notice.

Section 2 of the *Act* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- ...
- (d) a former landlord, when the context requires this;

Based on the testimony of the parties I am satisfied that the named respondent is the agent of the Owners who exercise their power to manage the property. I therefore find that the named respondent is a landlord as defined under the *Act*.

While I accept the evidence of the landlord that neither they nor the Owners, instructed the Sellers to issue the 2 Month Notice, the Act simply provides that where a 2 Month Notice has been issued and the stated purposes are not accomplished the tenant may seek compensation from the purchaser of the property. In the present case, I accept the evidence of the parties that the Seller was not instructed to issue the 2 Month Notice and they appear to have issued one when they had no obligation or evidentiary basis to do so.

While the Seller's conduct and representation may give rise to a claim between Owner and the Seller that does not impact the tenant's right to a monetary award pursuant to section 51(2) of the Act. The tenant filed their application for dispute resolution and named the respondent whom I have found to be a landlord as defined under the Act.

I accept the undisputed evidence that the tenant was issued a 2 Month Notice which stated that the purchaser intends to occupy the rental unit. I accept the evidence of the parties that there was no basis for the 2 Month Notice as the Owners did not make

written request to the Seller to give notice to the tenant. I accept the undisputed evidence that the rental unit has never been occupied by the Owners and it is currently being rented out. Therefore, in accordance with section 51(2) of the Act, as steps have not been taken to accomplish the purpose identified in the 2 Month Notice, I find that the tenant is entitled to a monetary award in the amount of \$4,110.00, double the monthly rent payable.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the evidence that the issuance of the 2 Month Notice was in violation of the Act as the Seller did not have instructions in writing to issue a notice on the tenant. I find that as a result of the 2 Month Notice the tenant incurred costs of moving as shown in the invoice submitted into evidence. I find that the tenant is entitled to a monetary award in the amount of \$572.25 for the cost of moving incurred as a result of the Seller's violation of the *Act*.

As the tenant's application was successful the tenant may recover the \$100.00 filing fee for their application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$4,782.25 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, the 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: September 17, 2018

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Residential Tenancy Branch