



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 51(2) and 67; and
- authorization to recover their filing fee for this application from the landlords 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 tenant confirmed that they received the 2 Month Notice issued by the landlord on August 14, 2017, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's agent, the landlord's spouse (the landlord), confirmed that on July 14, 2018, they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail earlier that month, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### 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 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 August 14, 2017? Is the tenant entitled to recover the filing fee for their application from the landlord?

### Background and Evidence

While I have turned my mind to all of the relevant documentary evidence, including copies of miscellaneous documents submitted by the parties, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This tenancy was initially set to cover the fixed term from May 1, 2016 until April 30, 2017. Monthly rent was set at \$1,200.00, payable in advance. In a July 17, 2018 decision of an arbitrator appointed pursuant to the *Act*, the landlord was allowed to retain the tenant's pet damage and security deposits. When the tenancy continued without the signing of a new tenancy agreement, the tenancy continued on a month-to-month basis until the tenant vacated the rental unit on October 31, 2017, after having received the 2 Month Notice seeking an end to this tenancy by that date. The reason stated on the landlord's 2 Month Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant provided undisputed sworn testimony and written evidence that the landlord first approached the tenant about showing the rental unit to prospective purchasers of the rental home on or about August 3, 2017. At that time, the prospective purchaser was the cousin of the landlord's spouse and that cousin's wife.

When the tenant informed the landlord that the landlord could not obtain vacant possession of the rental unit without issuing a 2 Month Notice, the landlord issued the 2 Month Notice.

The tenant applied for a monetary award of \$2,400.00, representing the equivalent of two month's rent, because the tenant claimed that the people who moved into the rental unit shortly after the tenant vacated the premises was a nephew of the landlord's spouse and not a close family member as was defined in the *Act*. In the landlord's written evidence, the landlord corrected this claim, stating that the person who moved into the rental unit was the cousin of the landlord's spouse.

The landlord entered written evidence that their relatives who were hoping to purchase the rental home advised the landlord shortly after viewing the property that their circumstances had changed and they would not be able to obtain mortgage financing to enable them to purchase this property. In written evidence and sworn testimony, the landlord maintained that the landlord's 24-year old stepdaughter approached the landlord and the landlord's spouse sometime in August 2017 with a proposal that she move into this rental property by December 1, 2017. The landlord said that the stepdaughter was living with a couple at that time in a basement apartment, which was not a healthy situation for their stepdaughter. In written evidence and sworn testimony, the landlord said that the stepdaughter changed her mind about moving into the rental unit and informed the landlord's spouse about this change of mind in mid-October 2017. By then, the stepdaughter had applied for housing with a local housing provider and been approved for one of their two bedroom units. The landlord said that their stepdaughter moved into this other two bedroom rental unit on November 1, 2017. When their stepdaughter changed her mind about staying in the landlord's rental home, the landlord's cousin and his wife contacted the landlord with a new proposal to enter into a rent-to-own situation. The landlord agreed to this proposal, and the landlord's cousin and spouse moved into the rental unit by December 1, 2017.

The landlord entered into written evidence a copy of an August 5, 2018 letter from the landlord's stepdaughter attesting to the above account of what transpired. The August 2018 letter from the stepdaughter was issued after the tenant applied for dispute resolution, claiming that the people who moved into the rental unit were the same ones who viewed the property in early August 2017, and were not close family members as defined by the *Act*.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the landlord to prove on the balance of probabilities that they are entitled to the monetary award requested in their application. Section 7(1) of the *Act* establishes that a landlord who

does not comply with the *Act*, the regulations or the tenancy agreement must compensate the tenant for damage or loss that results from that failure to comply.

Section 49(3) of the *Act* provides the statutory authority whereby a landlord may end a tenancy for landlord's use of the property under the following circumstances:

*(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 49(1) of the *Act* defines a close family member for the purposes of that section of the *Act* as the individual's parent, spouse or child, or the parent or child of that individual's spouse. This definition does not extend to include a cousin.

The following portions of section 51 of the *Act* have a bearing on the tenant's eligibility for compensation after receipt of the 2 Month Notice from the landlord:

**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 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*

*(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...*

I have also taken into consideration Residential Tenancy Branch Policy Guideline 2, which reads as follows:

*...If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA 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 this case, there is little doubt that the cousin and the cousin's spouse would not meet the definition of a close family member as defined by section 49(1) of the *Act*. However, the landlord has provided written evidence and sworn testimony that the reason for issuing the 2 Month Notice was to enable the landlord's stepdaughter to reside in the rental unit. The landlord's stepdaughter would qualify as a close family member pursuant to section 49(1) of the *Act*.

Since a close family member did not move into the tenant's rental unit, the burden of proof rests with the landlord to demonstrate that unforeseen circumstances arose that led to someone else moving into this rental unit, rather than a close family member, as defined by section 49(1) of the *Act*. I find that other than a short letter from the stepdaughter that appears to have been issued in response to the tenant's claim, the landlord has provided little evidence to meet that burden of proof and corroborate the claim that the 2 Month Notice was issued to enable the stepdaughter to move into the rental unit. The landlord's stepdaughter did not participate in this hearing, nor did the people who moved into the rental unit, the landlord's cousin and the cousin's spouse. The landlord did not provide any evidence of any text messages, emails or other documents that would support the assertion that their stepdaughter was intending to move into the rental unit until mid-October 2017, when she changed her mind. The landlord provided no copy of the application the stepdaughter had made to the company that made housing available to the stepdaughter on November 1, 2017. The landlord provided no copy of any letter or email from the company that made housing available to the stepdaughter. Information regarding the stepdaughter's application and approval of her application to this company is important as the stepdaughter referenced that company's approval of a two bedroom apartment for her as part of her reason for deciding to not move into the landlord's rental home. When asked, the landlord did not know when the stepdaughter had applied for this housing or when she received approval for her housing request to the company that leased premises to her. The

landlord provided no copy of any notice to end their stepdaughter's existing rental arrangements in the basement suite where she was living when she contacted the landlord about renting this suite from the landlord in August 2017. The landlord provided nothing in writing from their cousin or their cousin's spouse to confirm any of the details involving them.

This lack of important corroborating evidence from the landlord is in contrast to the tenant's undisputed sworn testimony and written evidence. The tenant is correct in alleging that the same member of the landlord's extended family who viewed the rental unit on August 3, 2017, as a prospective purchaser, moved into this rental unit a month after she vacated the rental unit. This new tenant is not a close family member as defined by section 49(1) of the *Act*.

Based on a balance of probabilities, I find that the landlord has supplied insufficient evidence to demonstrate that there were full intentions at the time that the 2 Month Notice was issued to have a close family member reside in the tenant's rental unit. If the landlord's stepdaughter truly planned to move into the rental unit and changed her mind, there was likely ample corroborating evidence that could have been provided by the landlords to refute the tenant's claim for a monetary award. For these reasons, I find that the tenant has demonstrated her entitlement to a monetary award pursuant to section 51(2) of the *Act*, as I find that the landlord did not use the rental unit for accommodating a close family member, the purpose stated in the 2 Month Notice, and the landlord has provided insufficient evidence to support the landlord's explanation for why this did not occur. I issue a monetary award in the tenant's favour in the amount of \$2,400.00, the equivalent of two month's rent at the rental unit.

As the tenant has been successful in this application, I allow the tenant to recover her \$100.00 filing fee from the landlord.

### Conclusion

I issue a monetary award in the tenants' favour in the amount of \$2,500.00, which allows the tenant to recover the equivalent of two month's rent from the landlords and the recovery of their 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 06, 2018

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Residential Tenancy Branch