



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDCT, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenants seeks a monetary order in the sum of \$17,500

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord HW stated his name is HB. He consented to an order to amend the style of cause of the Application for Dispute Resolution to include his name of HB.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlords by mailing, by registered mail to where the landlords reside on August 21, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are whether the tenant is entitled to a monetary order and if so how much?

### **Background and Evidence:**

The tenant entered into a tenancy agreement with the previous owners that that provided that the tenancy would start on October 1, 2017, end on April 1, 2018 and become month to month after that. The rent was \$1400 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$700 on June 1, at the start of the tenancy.

On May 11, 2018 the previous landlord served a 2 month Notice to End Tenancy on the tenant that set the end of the tenancy for July 31, 2018. The grounds set out in the Notice are as follows:

“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 close family member intends in good faith to occupy the rental unit.”

The tenant also produced the document dated May 3, 2018 titled TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION indicating that all of the subjects have been removed and that the buyers were requesting the previous landlord to give notice requiring the tenants to vacate by August 1, 2018.

The tenant vacated the rental unit on July 31, 2018.

The tenant testified the buyers' family did not move in and that the landlord has rented the rental unit to another party at an increased rent.

The landlords gave oral evidence, referred to a written statement which they prepared, letter from the previous owners and a letter from the downstairs tenant. The evidence can be summarized as follows:

- The buyers purchased the property which included a main house and the rental house which is the subject of this application. The tenant occupied the upstairs portion of the rental unit. There is another tenant living in the basement.
- When the buyers viewed the property they were surprised to see how messy and dirty the upstairs suite was. This was very different from the downstairs suite.
- At the time the buyers purchased the property it was their intention that his parents would move into the rental unit. However, his wife found a job during the summer months and it became necessary for his parents to continue to live in the main house to take care of their two children.
- They faced significant financial pressure to pay the mortgage every month and decided it was wise to rent the rental unit.
- On August 1, 2018 when they took possession they became very frightened as to the extremely poor condition the tenant left the rental unit. The tenant has caused significant damage that far exceeds the security deposit. The landlord attached a number of photos of the damage.
- The landlord produced a letter from the previous landlord that states:
  - The tenant had 3 months to find a new place.

- The tenant left the rental unit causing significant damage and trash on the property.
  - The tenant had a place to live in town.
  - The tenant receive a month's free rent
- The landlord produced a letter from the downstairs tenant stating the tenant is a bad tenant and giving particulars.
- The landlord estimate it will cost over \$5000 to repairs the damage caused by the tenant.
- The landlord summarized their position as follows:
  - They faced significant financial pressure to pay off the mortgage.
  - His parents were originally going to move in but that was not possible after the female landlord found work as the parents were needed to stay in the main house and take care of their children.
  - The tenant gave a bad impression and they were afraid to rent to her.

### The Law:

Section 51 (2) and (3) of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), **an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if (my emphasis)**

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, **extenuating circumstances** prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.<sup>51</sup>

Policy Guideline #50 includes the following:

### C. ADDITIONAL COMPENSATION FOR ENDING TENANCY - LANDLORD'S USE

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) 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).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation.

#### Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

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## E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

### Analysis:

After carefully considering all of the evidence I determined that the Tenant is entitled to the equivalent of 12 rent for the following reasons:

- The 2 month Notice to End Tenancy served on the Tenant provided that landlord had received notice in writing that the buyers intended in good faith that they or a close family member would occupy the rental unit.
- The tenant vacated the rental unit in accordance with the Notice to End Tenancy on July 31, 2018.
- The landlords failed to present evidence that either they or a close family member has occupied the rental unit. They acknowledged the rental unit has been rented to a 3<sup>rd</sup> party. There is no evidence that the landlord or close family member now has any intention of moving in.
- After carefully considering the evidence of the landlord I determined the landlord has failed to present sufficient evidence of extenuating circumstances that would

excuse the landlord from paying the 12 months compensation for the following reasons:

- A buyer does not have a legal right to use a 2 month Notice to End a Tenancy for landlord use where a buyer is concerned the tenant might be a “bad tenant.” This would result in the landlord improperly getting around the provision to prove cause under section 47.
- I do not accept the submission of the landlord that financial pressure amounts to extenuating circumstances. The buyer had the option to purchase the property with the Tenant still in the rental unit and paying rent.
- The law does not permit a landlord to end the tenancy for one tenant in order to rent it to another tenant at a higher price.
- The landlord failed to provide evidence of when and with whom she obtained another job.
- I do not accept the submission of the landlord that obtaining of a job prevented the landlord's parents from moving into the rental unit. The house is only a short distance away from the main house.

In summary I determined the tenant has established a claim under section 51(2) for the equivalent of 12 months rent. The landlords failed to use the rental unit for the purpose stated in the Notice which was that they or a close family member was to move into the rental unit. They have rented to a 3<sup>rd</sup> party. On the basis of the evidence presented I determined the landlords or a close family member do not intend to move into the rental unit. Finally I determined the landlords failed to establish extenuating circumstances which would excuse the payment of compensation. An arbitrator does not have the jurisdiction to reduce the amount.

#### Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$16,800 (\$1400 x 12 months = \$16,800). I dismissed claim for the cost of the filing fee as the tenant failed to prove she paid the filing fee. .

The tenant stated she added her security deposit as part of the claim. I determined the tenant failed to give sufficient notice of this claim. As a result I dismissed the claim for the return of the security deposit with leave to re-apply.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 final and binding on the parties.**

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: November 09, 2018

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Residential Tenancy Branch