



# Dispute Resolution Services

Page: 1

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 the following:

- a. A monetary order in the sum of \$10,860
- b. An order to recover the cost of the filing fee.

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.

I find that the 2 month Notice to End Tenancy dated March 29, 2018 for landlord use was served on the tenant by mailing to where the tenant resides and she received it on April 4, 2018. I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail to where the landlord resides on August 27, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on February 1, 2014. The tenancy ended on June 30, 2018. The rent at the time the tenancy ended was \$905 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$425 at the start of the tenancy. The security deposit has been dealt with. .

The tenant received a 2 month Notice to End Tenancy on April 4, 2018. The end of tenancy date was June 30, 2018. The grounds set out in that Notice are as follows:

### **Grounds for Termination:**

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides 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 seeks a monetary order in the sum of \$10,860 for the equivalent of 12 months rent under the provisions of section 51(2) of the Act that applied after May 17, 2018.

A significant issue is whether the Act that was in force when the Notice to End Tenancy was served applies or whether the Act that was in force at the time the tenancy ended applies. The Act was changed effective May 17, 2018. Post May 17, 2018 where a landlord failed to comply with section 51(2) the tenant was entitled to the equivalent of 12 months rent but the arbitrator was to determine whether extenuating circumstances existed which would excuse the payment. Prior to that date the tenant was entitled to the equivalent of 2 months rent but the arbitrator did not have the authority to consider whether extenuating circumstances existed which could excuse the payment.

The version of section 51(2) which was in force prior to May 17, 2018 provided 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

(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. (My emphasis)**

The version of section 51(2) and (3) after May 17, 2018 provides as follows:

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 (bold is my emphasis)** 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>

The landlord gave the following evidence:

- Prior to serving the 2 month Notice to End Tenancy she consulted with an information officer at the Branch.
- She lives in the prairies. Her husband recently retired. It was intended that they would use the rental unit on the west coast as a get-away home.
- The tenant received the benefit of one month rent under section 51(1) by applying it to the rent for June.
- The landlord hoped that her daughter could spend the July long weekend in the rental unit. However, it was not sufficiently cleaned and she could not do so.
- The landlord used the rental property for July 1, 2018 to July 12, 2018 and for 2 nights in the middle of August.
- In the middle of August it became clear a change in family dynamics and two other previously booked commitments would make it difficult to use the rental property from September to December.
- A decision was made to rent it on a short term basis from September to December. The landlord testified that those tenants have refused to vacate the parties have agreed to extend the term for another two months.
- The property is not presently listed for sale. However, the landlord intends to list it for the spring.

The tenant gave the following evidence:

- The landlord has not taken steps to accomplish the intended purpose within a reasonable time after the effective date of the Notice to End Tenancy and has not used the rental unit for the stated purpose for at least 6 months duration beginning within a reasonable time after the effective date of the Notice.
- The tenant testified as to how difficult it was for her trying to find alternative accommodation, that she had to leave her child with her parents for the summer months,

that she was not able to do her art work and lost work as a result. I determined this evidence was not admissible as it was not relevant to whether she was entitled to claims she was making. The Act provides that if the tenant satisfies the requirement under section 51(2) she is entitled to 2 months rent if the old Act applies or 12 months rent if the amended version applies. The Act does not to account the family status of the tenant or any difficulties the Tenant may have faced as a result of the ending of the tenancy.

- The landlord has rented the rental unit charging a rent of \$1690 per month.

#### Analysis:

After carefully considering all of the evidence I made the following determinations:

- I do not accept the submission of the landlord that 2 visits (one of 12 days in July and the other of 2 nights in August) are sufficient to fulfill the requirements of the Act. The landlord subsequently rented it on a 4 month short term lease which has been extended another tenant months. The property will be listed for sale in the spring. I determined that the landlord failed to take steps to accomplish the intended purpose within a reasonable time after the effective date of the Notice to End Tenancy. The landlord has not used the rental unit for the stated purpose for at least 6 months duration beginning within a reasonable time after the effective date of the Notice.
- I determined that the provisions of section 51(2) which was in force prior to May 17, 2018 (at the time the Notice to End Tenancy was served) are the provisions which apply and not the post May 17, 2018 provisions for the following reasons:
  - The 2 month Notice to End Tenancy served on the Tenant by the landlord states that if the landlord fails to follow the provisions of the Act the tenant was entitled to "the equivalent of 2 months notice.
  - The landlord discussed the matter with an information officer of the Branch prior to serving the Notice. At that time the consequences of failing to do what was required was the payment of an additional 2 months rent and not 12 months rent. The landlord relied on the information available at the time.
  - The triggering event for payments under section 51 is the service of a 2 month Notice to End Tenancy under section 49. The landlord was obliged to make these payments as of April 4, 2018 if they failed to follow what was required.
  - The Act does not state that it is to have retroactive application. The legislation does not provide that increased section 51(2) payment of the equivalent of 12 months rent was to be applied to a Notice to End Tenancy served prior to change in legislation.
- Given my determination that the provisions in place prior to May 17, 2018 apply and the post May 17, 2018 it is not necessary to considering whether there are extenuating circumstances.

#### Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1810 ( $\$905 \times 2 = \$1810$ ) plus the sum of \$100 in respect of the filing fee paid for a total of \$1910.

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: December 21, 2018

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Residential Tenancy Branch