



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 460 PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act*, and for the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent and legal counsel attended the hearing to assist the landlord. The tenant's agent also attended the hearing.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Is the tenant entitled to compensation and to the return of his filing fee?

### **Background and Evidence**

The tenancy started on July 01, 2017 for a fixed term of one year which would end on June 30, 2018. The monthly rent was \$1,600.00 due on the first of each month. On April 04, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The tenant confirmed that the reason for the notice was that the landlord or his family member intended to move into the rental unit. The effective date of the notice was June 30, 2018.

The tenant considered disputing the notice to end tenancy but eventually decided not to do so. The tenant moved out on June 30, 2018. The tenant agreed that he received compensation pursuant to such a notice and was provided with the equivalent of one month's rent.

The tenant stated that he drove by the rental unit on August 18, 2018 and noticed that construction work was on going. On September 30, 2018, the female tenant visited the occupant of the neighbouring home and noticed a toilet bowl lying outside on the lawn and the rental unit appeared to be vacant.

The tenant made this application on October 03, 2018 for compensation in the amount of 12 months rent plus for the recovery of the filing fee.

The landlord testified that sometime at the end of 2017, he put a down payment on a lot upon which he intended to build a home for his use. The landlord stated that at the time he served the tenant with the notice to end tenancy he was residing in his own home and intended to move into the rental unit in order to sell his home and raise funds to complete the purchase the lot that he had put a deposit on.

Both parties agreed that the paint inside the rental unit was peeling off. The landlord hired a painter to paint the unit, and it was found that some drywall had to be replaced. The landlord stated that the house was built in the 1980s and therefore he had to obtain a clearance from the local Municipality to ensure that asbestos was not present in the walls.

The landlord stated that the process to obtain the clearance resulted in a delay and after obtaining the clearance, he proceeded to get the unit painted. The landlord stated that since he was moving from a 2,400 square foot home to a 1,400 square foot home he decided to build in some storage space. The landlord also added that due to a disturbance in the surrounding area that involved homeless people the contractor stopped work and removed all tools from the premises until the matter was resolved.

The landlord stated that the work took longer than he expected due to the delays described above and due to the difficulty in finding construction tradesmen during the summer which is peak time in the construction industry.

The landlord testified that he moved into the rental unit on October 31, 2018 and continues to reside there with his family. The landlord's home sold in November 2018. The landlord stated that the work on developing his lot has not yet started.

The tenant confirmed that the rental unit was not advertised as available for rent and that it was vacant at least up to September 30, 2018. The tenant alleged that the landlord did not move into the unit in a reasonable time and did so only after the tenant served the landlord with a notice of this hearing.

## **Analysis**

Section 51 of the *Residential Tenancy Act* addresses compensation pursuant to a section 49 notice.

Section 51(2) states as follows:

### **Tenant's compensation: section 49 notice**

(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

(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.

Section 51.3(2) states

The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from complying with section 51.2 (2).

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit.

Based on the testimony of both parties, I find that the landlord started painting and adding storage to the unit for valid reasons. The tenant agreed that the paint was peeling, and I accept the landlord's testimony that he was downsizing and therefore needed additional storage space. I also accept the testimony of the landlord that there were some delays which were out of his control and that it took four months to complete.

I further find that the landlord did move into the rental unit and continues to reside in the rental unit. Based on a balance of probabilities, I find that it is more likely than not that the landlord intended to move into the rental property when he served the tenant with the s.49 notice. Given the circumstances regarding the possibility of the presence of asbestos, the seasonal timing of the work and the police event that took place in the neighbourhood, I find that the passage of time prior to the date the landlord moved in was not unreasonable.

I find that the landlord's testimony was credible, and he has proven that when he served the tenant with a notice to end tenancy, he intended to move into the rental and continues to use the unit for the purpose stated on the notice to end tenancy.

Accordingly, I find that the tenant is not entitled to compensation in the amount of twelve month's rent. Since the tenant has not proven his case he must also bear the cost of filing this application.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: January 31, 2019

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Residential Tenancy Branch