



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to sections 51 and 67; and
- authorization to recover her filing fee for this application from the purchaser pursuant to section 72.

The tenant attended the hearing with her lawyer, GG and her lawyer/witness, LW. The purchaser appeared with her lawyer MM. Both parties were given the opportunity to present affirmed testimony, submit evidence and cross-examine each other's witnesses.

The tenant testified that she served the purchaser with the notice of dispute resolution package on by Canada Post registered mail on November 29, 2018 and there were no issues raised with regards to service. I find that the purchaser was served with the notice of dispute resolution package in accordance with section 89 of the *Act*. The purchaser stated that she had not received the tenant's evidence package. However, the purchaser waived any objection to the nonservice of the tenant's evidence. Accordingly, I will allow the admission of the tenant's evidence package.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to sections 51 and 67?

Is the tenant entitled to recover her filing fee for this application from the purchaser pursuant to section 72?

### Background and Evidence

The tenant testified that she began residing at the rental unit on January 1, 2016. The tenant testified that she received the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on March 23, 2018. A copy of the Two Month Notice was introduced as evidence.

The Two Month Notice stated the following reason to end the tenancy:

All 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 rental unit.

The Two Month Notice was dated March 23, 2018 and the notice stated a move out date of May 31, 2018. The tenant testified that she moved out of the rental unit at the end of May 2018.

The tenant's witness LW testified that he drove past the property regularly on his way home from work and he noticed that the property was always dark and appeared vacant. LW testified that in August 2018 he noticed multiple people suddenly residing at the property. LW testified that he went to the property and was told by the occupants that multiple college students were renting the property. LW testified that the college students told him that they had responded to an online rental advertisement and they were renting the property.

The purchaser testified that she wanted vacant possession of the property because she intended to move into the property after the sale completed. The purchaser testified that she owned another property and her original plan was to sell the other property and then move into this property after the sale completed. However, after the purchaser acquired the new property, she testified that her real estate agent advised her that she should perform improvements on her old property before selling it to improve the market value.

The purchaser testified that she started work on her old property and she moved into an upstairs bedroom in the new property. The purchaser testified that she also stored personal possessions in the garage. The purchaser testified that she moved from the

upstairs bedroom to the downstairs bedroom in July 2018. The purchaser testified that she does share the property with college students. The purchaser testified that she occupies one bedroom and the garage and she that shares the common areas with the college students.

### Analysis

Section 51(2) of the *Act*, as in effect at the date the Two Month Notice was issued, stated that if a purchaser asked a landlord to give a Two Month Notice to End Tenancy for Landlord's Use of Property, the purchaser must pay the tenant an amount equal to two months rent 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.

It should be noted that section 51(2) of the *Act* has been amended and the current version of this section provides for a payment equal to twelve times the amount of the monthly rent. The new provision went into effect on May 17, 2018.

The tenant argued that the new provision of section 51(2) of the *Act* imposing a twelve month monetary award should be applied in this matter because the effective date of the Two Month Notice was after the May 17, 2018 transition date. I do not find this argument persuasive. The old provision was in effect as of the date the notice was issued on March 23, 2018 and the monetary award under section 51 relates to the issuance of notice. There is no statutory authority to impose a penalty on the purchaser for conduct which incurred before the provision was implemented. In addition, the instructions on page two of the Two Months Notice state:

If the landlord does not take steps towards the purpose for which this Notice was given or the unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of this Notice, the landlord or purchaser must pay the tenant an additional amount equal to **double** the monthly rent paid under the tenancy agreement.  
[emphasis added]

I find that the new provision of section 51(2) only applies to notices to end tenancy issued after May 17, 2018. Since this Two Month Notice was issued on March 23, 2018, I hold that the previous version of section 51(2) applies and the maximum monetary award that the tenant may be entitled to in this matter is limited to an amount equal to double the monthly rent.

Section 51(2) of the *Act* states that a purchaser can be found liable for the issuance of an improperly served notice to end tenancy if a purchaser asks a landlord to submit the notice to end tenancy. In this matter, the Two Month Notice specifically states that "...the purchaser has asked the landlord, in writing, to give this Notice". In addition, the purchaser testified that she wanted vacant possession of the property because she intended to move into the property. On the balance of probabilities, I am satisfied that the purchaser asked the landlord to issue the Two Month Notice.

Pursuant to section 51(2), the tenant must also establish that either 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 the rental unit is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the tenant has not established either of these requirements. The purchaser testified that she moved into the property in June 2018, a few weeks after the purchase of the property was completed. The purchaser testified that she furnished one bedroom and she stored personal possessions in the garage. I find that this is sufficient personal use of the property as contemplated in the Two Month Notice.

The tenant argued that the property was actually vacant until August 2018. The only evidence that the tenant presented to establish that the property was vacant was the testimony of her witness LW who stated that he drove past the property regularly and he noted that the property was dark and appeared vacant. On the balance of probabilities, I am not convinced that information is sufficient to establish that the property was vacant in June and July of 2018. The purchaser's testimony was credible and uncontroverted. There are many reasons why the property may appear to be dark at times even with an occupant. I do not find that the evidence of witness LW necessarily contradicts the evidence of the purchaser. As such, I find that the purchaser

did make adequate personal use of the property within a reasonable time of the effective date of the notice.

The purchaser has continued to use the property for her personal use for more than six months after the effective date of the notice. The purchaser has testified that she has occupied the property since June 2018. The fact that the purchaser has rented a portion of the property to others does not change the fact that the purchaser has been making personal use of the property, as stated in the Two Month Notice. There is no requirement that a purchaser needs to make personal use of the entire property.

I find the arrangement that the purchaser has with the college students is not a tenancy agreement within the meaning of the *Act*. Section 4(c) states that the *Act* does not apply to a "...living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation." In this matter, the purchaser's undisputed testimony was that she occupied a single bedroom and the garage and that she shared the common areas of the house with the college students. As such, the relationship between the purchaser and the college students is not a tenancy relationship within the scope of the *Act* pursuant to section 4(c). Accordingly, I find that the purchaser has been occupying the entire property for the of the purposes of the *Act* notwithstanding the fact that college students are also occupying the property

For these reasons, I find that the tenant is not entitled to a monetary award pursuant to section 51(2) and 67 of the *Act* and I dismiss her application.

Since the tenant has not prevailed in this matter, I deny her request for reimbursement of the filing fee.

### Conclusion

I dismiss the tenant's application for a monetary award pursuant to sections 51(2) and 67 of the *Act* without leave to re-apply.

I dismiss the tenant's application request for reimbursement of the filing fee without leave to reapply.

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: February 1, 2019

---

Residential Tenancy Branch