



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDCT, FFT

### Introduction

On November 7, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to request a monetary order for damages or compensation under the *Act* and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord's Agent (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Has there been a breach of Section 49 of the *Act* by the Landlord?
- Is the Tenant entitled to compensation pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties agreed that the tenancy began on April 1, 2017, as a 2-year fix term, that rolled into a month to month at the end of the initial term of the tenancy. Rent in the amount of \$1,700.00

was to be paid by the first day of each month, and the Tenant paid the Landlord an \$850.00 security deposit at the beginning of the tenancy.

All parties agreed that the Landlord served the Tenant a Two-Month Notice to End Tenancy for Landlord's Use of Property in person on May 18, 2018. The notice indicated an effective end of tenancy date of July 31, 2018. A copy of this notice was submitted into evidence. The reason checked off by the Landlord within the Notice was as follows:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Both parties also agreed that the Landlord had served the wrong Notice and that eleven days later, the Landlord served the Tenant a Four-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on May 29, 2018. The Notice indicated that the Tenant was required to vacate the rental unit on September 30, 2018. The reason checked off by the Landlord within the Notice was as follows:

- Demolish the rental unit.
  - I have obtained all permits and approvals required by law to do this work.

Both parties agreed that the Tenant moved out of the rental unit, in accordance with the Four-Month Notice on September 18, 2018, and that the Tenant's security deposit was returned to the Tenant in accordance with the *Act*.

The Tenant testified that the day she moved out of the rental unit the Landlord had advised her that he had not secured the financing for the demolition and development of the property that the work would be delayed.

The Landlord testified that he had been unable to secure the financing for the development of the property and that he had moved two people into the rental unit, rent free, for security purposes.

Additionally, the Landlord also testified that he had been approached by a third-party developer who made him an offer to purchase the property. The Landlord testified that he had agreed to the sale of the property to the third-party developer and submitted a copy of the contract of purchase and sale into documentary evidence, dated September 27, 2018.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51 of the *Act*. I note that section 51 of the *Act* was amended on May 17, 2018. Therefore, I must first determine if the amended legislation pertains to the Notice issued in this case or if this Notice falls under the old legislation.

The royal assent for the legislated amendments was received on May 17, 2018, and stated that the amendments apply to all notices issued as of the date of royal assent and onwards.

I note that the Landlord initially issued a Two-Month Notice on May 18, 2018, but after being advised of the change in legislation he corrected this by issuing the required Four-Month Notice, on May 29, 2018. In this case, I find that the Notice was issued on May 29, 2018, after the date of royal assent and therefore falls under the form and content of the updated legislation. The amended legislation states the following:

**Landlord's notice: landlord's use of property**

**49** (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

I accept the testimony of both parties that the Landlord served the Notice to end the tenancy in compliance with sections 49(6) and 49(2)(b) of the Act, and that the Notice had an effective date of September 30, 2018. I also accept that the Tenant moved out of the rental unit in accordance with the Notice on September 18, 2018.

In this case, the Tenant is seeking compensation pursuant to section 51(2) of the Act, which states the following:

**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

(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.

I accept the testimony of both parties that as of the date of this hearing the Landlord has not used the property for the purpose stated on the Notice; instead of taking steps to accomplish the stated purpose for ending the tenancy, the Landlord sold the rental unit, on September 27, 2018, less than ten days after the Tenant had moved out. I find that selling the rental unit, is quite a different purpose than taking steps to demolish the property.

Whether the Landlord intended in good faith to demolish the rental unit at the time, his intent as indicated in the Notice is moot, given the fact that the Landlord sold the property before the effective date of the notice. I find that the Landlord has failed to take steps within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy and that the Landlord has no intention of personally following through with the stated reason, listed on the Notice for ending the tenancy.

However, I must also consider section 49(3) of the Act, which sets out that if there are extenuating circumstances, I may excuse the Landlord from their duty to use the property for the stated purpose. Section 49 of the Act states the following:

**Tenant's compensation: section 49 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.

The *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* provides guidance on interpreting the term “Extenuating circumstances.” Section E of the guide reads as follows:

#### **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

The commonality of the examples, outlined in the guide for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

In this case, the Landlord willingly chose to sell the rental unit before the effective date of the Notice. As such, I find that the Landlord was in control of his decision to sell and that the sale of the property is not an extenuating circumstance. Consequently, I find that the Landlord is not exempted from being liable pursuant to section 51(2) of the *Act* *including* the compensation due to the Tenant.

Therefore, I find on a balance of probabilities that the Tenant has met the onus of proving her claim under section 51(2) of the *Act*. Accordingly, pursuant to sections 67 of the *Act*, I award the

Tenant compensation in the amount of \$20,400.00, which is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

### Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$20,500.00**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 13, 2019

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Residential Tenancy Branch