



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This case involves a tenant's dispute against a purchaser (the "respondent") of a rental unit for compensation under section 51 of the Act (compensation equivalent to twelve months rent) and for compensatory recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution under the *Residential Tenancy Act* (the "Act") on November 22, 2018, and I presided over a dispute resolution hearing on March 1, 2019. The tenant and the respondent attended the hearing, and I gave them full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. While the parties raised some issues with respect to the service of documentary evidence, both parties acknowledged that they had received the other side's evidence sufficiently in advance of the hearing to have an opportunity to review.

I have only reviewed and considered oral and documentary evidence that met the requirements of the *Rules of Procedure*, to which I was referred, and that is relevant to the issues of the dispute. This is my decision regarding the dispute between the parties.

### Issues

1. Is the tenant entitled to compensation under section 51 of the Act?
2. Is the tenant entitled to compensation under section 72 of the Act?

### Background and Evidence

The tenant testified that the tenancy began on December 15, 2009 and ended on August 31, 2018. At the time he vacated the rental unit monthly rent was \$707.00.

He testified that his landlord—who was in the process of selling the house, in which two rental unit were located, to the respondent purchaser—issued a Two Month Notice to End Tenancy for Landlord's Use (the "Notice") on June 13, 2018, with an effective end of tenancy date of August 31. The tenant noted that both rental units' tenancies were ended for the same reason.

The tenant submitted a copy of the Notice into evidence; the Notice indicated that the reason the tenancy was ending was because "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 a close family member intends in good faith to occupy the rental unit."

A copy of a Contract of Purchase and Sale Addendum, dated June 4, 2018, states the purchasers' intentions in this regard, and reflects the reasons for ending the tenancy as stated in the Notice. The contract was submitted into evidence.

About a month after he moved out, the tenant returned to the property to collect any mail that might have come for him. There was no answer from the owner when he arrived, so he went and checked the mail for the rental unit and found a piece of mail addressed to someone with a different last name than that of the owner's son. The son, according to the respondent's testimony and written submission, lives in the rental unit. His daughter lives in the other rental unit. Both adult children are residing in the rental units until the family can open a daycare at some point in the future.

The tenant further explained that he had a discussion with a neighbour who had "felt someone was living there" in the rental unit.

The tenant argued that based on what he observed when visiting the rental unit that, he feels the respondent has not used the rental unit as stated in the landlord's notice to end tenancy, and that he is thus entitled to compensation under section 51 of the Act.

In response, the respondent explained that, yes, there are some letters that come to the property for people who he does not know. He explains that this happens whenever someone moves into a new place. That said, he contacted the previous owner (that is, the landlord) and asked about the mail; the landlord explained that this mail was for previous tenants, before the tenant lived there.

According to the respondent, the basement rental unit is not rented. His son is living there, and he moved into the rental unit approximately 15-20 days after the family moved into the house. He pointed out that the tenant's sole evidence consists of letters.

In rebuttal, the tenant suggested that it is easy to change a driver license's address. And, if the son really was living in the rental unit, why did the respondent not include a piece of mail addressed to the son. He argued that, as he had lived there for 9 years, he would have recognized mail for someone else. In other words, he did not receive this type of mail in the 9 years he was living there, so why would it now arrive?

In his rebuttal and final submission, the respondent asserted that "just because he lived there for nine years doesn't mean he's going to know all past tenants." He again explained that both rental units' tenancies were ended was because one is for the son and the other is for the daughter to reside in.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. *The onus to prove their case is on the person making the claim.*

In this case, the tenant seeks compensation under section 51, and specifically section 51(2), of the Act which states:

- (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

- (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
  - (c) 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 Notice was issued under section 49(5), which states that

A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit; [ . . . ]

While the tenant believes that the purchaser has not used the rental unit for the purpose as given in the Notice, his only evidence to support his claim is that “there was mail addresses to names other than family name of owner of the property” (page 1 of tenant’s “Evidence for RTB Case” submission). The only other evidence is fragmentary hearsay evidence from a neighbor who “felt someone was living there”; the tenant acknowledged that this remark was likely inadmissible, and I likewise place little evidentiary weight on the statement.

The burden of proof is on the tenant to prove that the respondent has not used the rental unit for the purpose stated in the Notice. The burden does not fall on the respondent to disprove the tenant’s claim unless the tenant has initially met the burden of proof, which he has not. I am not inclined to issue a monetary order for a \$8,484 claim is based solely on some mail and the “feeling” of a neighbor.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for compensation under section 51 of the Act.

As the tenant was unsuccessful in his application I dismiss the claim for compensation for the filing fee under section 72 of the Act.

### Conclusion

I dismiss the tenant’s application 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 Act.

Dated: March 1, 2019

---

Residential Tenancy Branch