



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNDCT

### **Introduction**

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

### **Background and Evidence**

This month-to-month tenancy began in 2014, and ended on September 30, 2018 after the tenant was served with a 2 Month Notice for Landlord's Use on August 26, 2018.

Rent for this tenancy was set at \$600.00, payable on the first of the month. The tenant paid a \$300.00 deposit, which was returned to him.

The tenant applied for a monetary order as set out in the table below:

Item	Amount
Compensation for landlord's failure to comply with section 49(3) of the <i>Act</i> (12x \$600.00)	\$7,200.00
Lost Wages (4 days x 12 hours x \$23.50)	1,128.00

Rent differential for new home (\$200.00 x 12 months)	2,400.00
<b>Total Monetary Order Requested</b>	<b>\$10,728.00</b>

It was undisputed by both parties that the landlord had served the tenant with a 2 Month Notice for Landlord's Use on August 26, 2018 as the landlord had sold the home, and the new buyers requested that the landlord serve the 2 Month Notice on the tenant. The reason provided on the 2 Month Notice was: "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 closer family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence.

The effective date of the Notice was for October 31, 2018, but the tenant elected to move out a month early with the consent of the landlord. The tenant testified that he mitigated his losses by moving in with his parents for the month of October 2018. The tenant looked for new housing, and signed a new tenancy agreement for community housing on a fixed-term agreement until January 2019. The tenant moved in November 1, 2018 at his new place, which was an additional \$200.00 in monthly rent, and was the minimum rental amount for housing based on his income. The tenant is seeking compensation as he had moved out in accordance with the 2 Month Notice, but the landlord never sold the home, and the unit was re-rented instead. The tenant provided a copy of a text from the landlord's agent on November 5, 2018 that the unit was re-rented. The tenant testified that he lost 4 days of work trying to locate new housing, and provided confirmation from his employer of his wages. In addition to compensation for the landlord's failure to comply with section 49 of the *Act*, the tenant is also seeking the rent differential for his new place, which is an additional \$200.00 per month.

The landlord does not dispute that they did not sell the home, as the buyers had backed out. The landlord testified that they had issued the 2 Month Notice because the buyers requested it, but the buyer did not fulfill the transaction. The landlord testified that this had occurred on or about October 5, 2018, and on October 11, 2018 the landlord contacted the tenant to ask him if he wanted to keep the rental unit. The tenant declined stating that he had found a new place.

The landlord feels that the tenant failed to mitigate his losses by refusing to move back at \$600.00 per month in rent, and that he could have easily cancelled his new tenancy agreement with his new landlord. The tenant does not dispute that the landlord contacted him, but testified that the monthly rent was never discussed. The tenant

testified that he no longer felt that he could trust the landlord after this incident, and regardless the tenant had signed a new fixed-term agreement that could not be ended.

### **Analysis**

Section 51(2) of the Act reads in part 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*

- (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.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had issued the tenant a 2 Month Notice for Landlord's Use, and failed to use the rental unit for the stated purpose on the 2 Month Notice. I find that the tenant moved out in accordance with the 2 Month Notice, and even though the landlord did contact the tenant asking the tenant if he wanted to continue the tenancy, the tenant could not for multiple reasons.

I accept the tenant's testimony that upon receipt of the 2 Month Notice on August 26, 2018 he had started searching for new housing, and signed a new fixed-term agreement.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45** (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is 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.*

Although the landlord's testimony that is that the tenant could have cancelled this new agreement, the *Act* does not allow the tenant to end such an agreement unless the new landlord agrees to do so. I find that the landlord has not provided sufficient evidence to support that this was an option the tenant had. Furthermore, I accept the tenant's testimony that he no longer felt that he could trust the landlord as the landlord had already ended the tenancy once, and the tenant had complied with the 2 Month Notice only to find out the landlord wanted to cancel the 2 Month Notice and continue the tenancy. I find that the tenant's reasons for not accepting this offer to be reasonable.

I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I order the landlord pay the tenant \$7,200.00 for failing to comply with section 49 of the *Act*.

The tenant testified that due to the end of this tenancy, he had to pay an additional \$200.00 in monthly rent. The tenant applied for 12 months of compensation. Although I accept that the tenant suffered this loss due to the landlord's actions, I am not satisfied that the tenant had sufficiently supported why he should be entitled to 12 months of rent differential. Accordingly, I allow the tenant \$200.00 in compensation for the rent differential.

The tenant also applied for lost wages in association with the time spent locating new housing. I am not satisfied that the tenant had provided sufficient evidence to support

that 4 days off of work was necessary in order to locate and secure new housing. I find that this is something the tenant elected to do, and not necessarily a loss directly associated with the landlord's non-compliance. On this basis, I dismiss this portion of the tenant's claim without leave to reapply.

As the tenant was only partially successful in his claim, I find that he is entitled to recover half of the filing fee for this application.

### **Conclusion**

I issue a **\$7,450.00** Monetary Order to the tenant as set out in the table below.

<b>Item</b>	<b>Amount</b>
Compensation for landlord's failure to comply with section 49(3) of the <i>Act</i> (12x \$600.00)	\$7,200.00
Rent differential for new home	200.00
Half of Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$7,450.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

The remaining portion of the tenant's application is dismissed 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: April 2, 2019

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**Residential Tenancy Branch**