



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, wherein the Tenants sought \$15,960.00 in monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 11, 2019 and continued on April 4, 2019 at 9:30 a.m. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter, as well that evidence specifically referenced by the parties during the hearing, were considered in making this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began April 23, 2014. Monthly rent at the time was \$1,295.00. At the time the tenancy ended rent was \$1,330.00.

The Landlord issued a 2 Month Notice to End Tenancy on July 24, 2018 (the "Notice"). The effective date of the Notice was September 30, 2018. The Notice was issued by the real estate company. The reasons cited on the Notice were as follows:

<input checked="" type="checkbox"/> 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.
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The Tenant stated that she moved from the rental property September 7, 2018. The Tenant confirmed that she was provided the month of August 2018 as her free month.

A.B., the Tenant's advocate submitted that the closing date for the sale was October 15, 2018. In support he provided a copy of a letter from the Landlord's realtor, J.L., confirming the sale date of October 15, 2018.

The Tenant stated that rather than occupy the rental property, the Landlord (new owners) renovated and sold the property.

The Tenant stated that the downstairs renter, C.D., (who lived in the basement suite since 2015) told her that the Landlord was trying to sell the rental property. C.D. was permitted to remain in the rental property after the sale.

The Tenant stated that it was her understanding that between March 11, 2019 and March 18, 2019, the Landlord/new owner sold the rental property.

The downstairs' renter, C.D., also testified. She confirmed that she has lived in the rental property since May 1, 2015. She confirmed that she was living there when the

Landlord/New Owner bought the rental property. She confirmed that she was not given a 2 Month Notice to End tenancy when the Landlord purchased the property.

C.D. stated that right after the upstairs' tenancy ended the suite was renovated and put back on the market. She stated that the rental home was listed for sale in December of 2018.

C.D. testified that to her knowledge the property was purchased by L.M. sometime between March 11, 2019 and March 18, 2019; she stated that she was aware of this because the sign outside the property had "SOLD" on it. She further confirmed that she contacted J.L., the Landlord's realtor, who emailed her on March 16, 2019 and confirmed the property had sold.

C.D. further confirmed that the Landlord gave her a 2 Month Notice indicating that the new owner wants to move into the basement suite. C.D. stated that their 2 Month Notice is dated March 26, 2019 and was signed by the Landlord, E.W. and was issued on behalf of the new owner, L.M. C.D. further confirmed that the reasons cited were the same as the one given to the Tenants, E.Y. and K.Y., namely that "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 close family member intends in good faith to occupy the rental unit."

C.D. stated that a few days after the Tenants moved out, she met with E.W., when they had started doing renovations on the property and asked if they were also going to receive a notice. He stated that he was not going to give a Notice, as it was his intention to "repaint the outside, put in new windows, update the roof and gutters and resell the house as soon as possible".

C.D. stated that the "For Sale" sign was put up in mid-December 2018.

C.D. stated that she was pressured by the Landlord and the realtor to move out because it would be easier to sell the property vacant. She stated that the originally offered \$1,000.00 to move out and the amount went up to \$1,600.00.

Documentary evidence confirmed that the Landlord, E.W., and the Tenant C.D. had discussions about a mutual agreement to end the tenancy.

C.D. stated that after the renovations were complete no one moved into the rental property. She further stated that even the utilities were put in her husband's name, S.F.

In response to the Tenant's claim, the Landlord, E.W., testified as follows.

He confirmed that he entered into negotiations to purchase the rental property in the late summer of 2018. He further confirmed that he gave written notice to the prior owners that he wanted the owner/landlord to give notice to end the tenancy as it was his intention to occupy the rental property.

E.W. confirmed that the property was listed for sale in December of 2018. E.W. stated that he "wished to market the property" early, but it was always his intention to live in the property for a minimum of six months. E.W. stated that he lives in the rental unit and he moved in there October 15, 2018.

E.W. stated that he has not yet sold the property to someone else. He described L.M. as a "potential new buyer" and stated that the house will not be officially sold until June 6, 2019. E.W. confirmed that he has a signed contract of purchase and sale with L.M. That document was not provided in evidence before me. At the conclusion of the hearing I ordered the Landlord to provide a copy of the contract of purchase and sale; I confirm that document was uploaded to the Branch's online service portal on April 8, 2019 (the same day as the hearing) and was reviewed in making this my Decision.

The Landlord's realtor, J.L., testified as follows. He confirmed that the Landlord has owned the rental property since October 15, 2018. J.L. stated that in the middle of December 2018 the house went to market. J.L. confirmed that he has an accepted offer on the rental property as of March 12, 2019. The completion date is June 6, 2019.

J.L. stated that he has visited the owner at the property several times and confirmed that the Landlord has been living there.

The contract of purchase and sale between E.W. (the seller) and L.M. (the buyer) indicates as follows:

- the date of the contract is February 20, 2019;
- the offer was accepted by the seller on February 27, 2019 and by the buyer on March 1, 2019;
- the subject removal dates are March 12, 2019;
- the completion date and adjustment date are June 6, 2019; and,
- the possession date is June 7, 2019.

## Analysis

The Tenant seeks monetary compensation from the Landlord pursuant to sections 49 and 51(2) of the *Act* which read as follows:

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

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

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

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
  - (i) not earlier than 2 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, or
- (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.
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (5) 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;
    - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (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.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
  - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
  - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

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

**51** (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

(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 Tenant submits that as the Landlord listed the rental property for sale rather than reside in the rental unit, she is entitled to the sum of \$15,960.00 representing 12 months' rent at \$1,330.00 per month.

The parties each provided testimony as to whether the Landlord resided in the rental property. It is important to point out that the Notice indicated that the landlord, landlord's spouse or close family member were to "occupy" the rental unit. The *Act* does not use the word "reside" or "live in". Meaning must be given to the words actually used in the legislation. "Occupy" and "reside" have different meanings. Since the *Act* does not require the landlord to "reside" in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant. As for the meaning of "occupy", the *Act* does not define the word "occupy" or "occupied" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

Based upon the evidence and testimony before me, I find that the Landlord took possession of the rental unit following the end of the tenancy and occupied the rental unit for at least six months after the effective date of the Notice. The evidence confirms that the property was listed for sale; however, the closing date is not until June 6, 2019, some nine months after the effective date of the notice. Provided that the sale completes as intended, it is at that time the Landlord will no longer occupy the rental unit.



Based on the above findings, I am satisfied the Landlord fulfilled the stated purpose on the 2 Month Notice and I find the Tenant is not entitled to compensation under section 51(2). Therefore, I dismiss her claim against the landlord.

Conclusion

The Tenant's claim for monetary compensation from the Landlord and her claim for recovery of the filing fee are dismissed.

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: May 29, 2019

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Residential Tenancy Branch