



# 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 damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

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

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

### Background and Evidence

This periodic tenancy began in December 2013. The landlord purchased the rental property and assumed the tenancy in May 2015. The monthly rent was \$997.52 payable on the 1<sup>st</sup> of each month. The rental suite is a basement suite in a detached home. The upstairs unit is a larger family suite occupied by another resident.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use dated August 30, 2018. The tenancy ended in accordance with the 2 Month Notice and the tenant vacated the suite in early November 2018. The parties agree that the landlord has refunded the equivalent of the last month's rent to the tenant as required under the *Act*.

The 2 Month Notice provides the reason for the tenancy to end is that the landlord or a close family member will occupy the rental suite. The tenant testified that they believe the landlord has not occupied the suite. The tenant said that they are frequently by the rental property and have observed renovation work being performed. The tenant submitted into evidence photographs of fixtures and appliances being discarded outside of the rental property. Based on their observations the tenant believes the landlord is not residing in the rental unit.

The landlord testified that after the tenancy ended they inspected the rental suite and decided to perform some renovations, repairs and maintenance to the property. The landlord said that this work took several weeks and the landlord began occupying the rental unit as of January 26, 2019.

The landlord submitted into evidence copies of utility bills showing that they are addressed to the landlord at the dispute address. The landlord explained that they issued the 2 Month Notice as they wished to occupy the rental property to avoid hefty capital gains taxes. The landlord said they chose to occupy the basement suite as they do not have children and do not need the larger main floor suite.

### Analysis

Section 51(2) of the *Act* states 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.

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the rental unit would be occupied by the landlord or a close family member. The landlord testified that they are currently occupying the rental suite and have been doing so since the end of January 2019. The landlord said that upon taking possession of the rental unit they decided to perform repairs, renovations and work. The landlord testified that the work took several months and they began occupying the rental unit as of January 26, 2019.

I find the landlord's evidence and testimony to be reasonable and convincing. I accept the landlord's evidence that they did not occupy the rental unit immediately upon the end of the tenancy but find that they did occupy the suite in a reasonable period. I accept the evidence that the landlord continues to reside in the rental suite at this time.

I do not find the tenant's evidence, consisting of photographs with hand written dates to be sufficient to show that the landlord is not occupying the suite. The tenant's observation that work is being performed at a residential address and fixtures and appliances are being discarded is not sufficient to show that the landlord is not residing at the rental suite.

I find the parties' submissions regarding the tenant's personal habits, the money paid by the landlord to assist in the move-out process and the marital status of the landlord to be irrelevant to the matter at hand.

I find that the landlord is residing in the rental suite as they stated they would on the 2 Month Notice. I accept that there was a period before the landlord occupied the suite but find that the delay was reasonable under the circumstances. Accordingly, I find that there is no basis for a monetary award in the tenant's favour and dismiss the tenant's application.

### Conclusion

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: May 24, 2019

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Residential Tenancy Branch