



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent attended the hearing. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of the other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started in February 2018. The monthly rent was \$1,000.00 due in advance on last day of each month. The rental unit is a two-level home. The tenant occupied the upper level suite and the landlord occasionally spent time in the suite located on the lower level. The tenant moved out on November 30, 2018 pursuant to a notice to end tenancy for landlord's use of property. The tenant agreed that she received from the landlord compensation in the amount of one month's rent.

On October 09, 2018, the landlord had served the tenant with a two month notice to end tenancy for landlord's use of property. The tenant filed a copy of the notice to end tenancy. The reason for the notice was that the landlord or a close family member of the landlord intended to move into the rental unit. The landlord stated that her mother and son who were residing overseas intended to move into the rental unit. The landlord filed into evidence two letters from her son.

In the letter dated October 12, 2018, the landlord's son states that he has completed his application for a tourist visa and is looking forward to spending Christmas in Canada. In the second letter dated March 03, 2019, the landlord's son states that his grandmother is not well and cannot travel. He also states that he is looking forward to spending Christmas in Canada. This letter dated March 03, 2019 refers to Christmas which was nine months away at the time the letter was written.

The landlord stated that she visited her family overseas in January to accompany them to Canada. The landlord filed copies of her boarding cards which confirm that she travelled on January 09, 2019 and returned on January 25, 2019. The landlord stated that while she was visiting, her mother fell ill and was not able to travel to Canada. The landlord filed a doctor's note which is dated February 20, 2019 which is about a month later and states that the landlord's mother suffers from dizziness and high blood pressure and recommends that she rest. The landlord returned to Canada on January 25, 2019, without her mother and son.

The landlord confirmed that her family will be coming to Canada on tourist visas and that they had made application in January 2019 but had not yet received their visas as of the date of this hearing. This contradicts the landlord's son's note written on October 12, 2018 in which he states that he has completed his visa application.

The tenant stated that as of the date of the hearing there was no one occupying the suite that she used to rent. The landlord stated that she was living in the rental home. During the hearing she also mentioned that she worked two jobs in a city that is a three-hour ride away from the rental home. The tenant pointed this out and then the landlord admitted that she only visits the rental unit on her days off. She also agreed that she used to visit the lower level occasionally while the tenant lived upstairs and continued to do so after the tenant moved out. The tenant also pointed out that the photocopy of the landlord's son's passport indicates that the passport expired in April 2019 and it is not likely that a visa will be issued on a passport that has less than six months of validity at the time of the visa application.

### **Analysis**

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a s.49 notice to end tenancy on October 09, 2018. The reason for the notice as check marked on the notice to end tenancy is that the landlord or a close family member intended to move into the rental unit. The landlord agreed that neither she nor a close family member moved into the rental unit as of the date of the hearing which is seven months after the notice was served on the tenant.

However, the landlord added that she spends her days off work in the lower level of the rental unit as she used to do in the past.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement. In addition to the amount payable under subsection (1), if

- (a) Steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) The rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the landlord or a close family member intended to move into the rental unit. I find that the landlord provided oral testimony during the hearing which contradicted the information she filed into evidence and implies that she did not serve the notice in good faith.

The family of the landlord who are allegedly moving into the rental unit live overseas and plan to visit as tourists. The landlord stated that her family had made application for visas in January 2019 while in his letter dated October 12, 2018, her son said that they made application in October 2018. Whatever the case, the landlord stated as of the date of the hearing (May 10, 2019), the family members did not have visas to come to Canada as tourists. I find that at the time the landlord served the notice, her family had not even applied for tourist or immigration visas.

The landlord also stated that her mother was too ill to travel with her in January 2019. However, without a visa to enter Canada, the landlord's mother would not be able to travel at all even if she was medically fit. The landlord provided a doctor's note dated February 20, 2019 which is about a month after the landlord's visit.

The letter from the son which is dated March 03, 2019 speaks about celebrating Christmas. It appears that either this letter was simply copied from the earlier one dated October 12, 2018 or that the family is looking forward to spending Christmas 2019 in Canada, which is about 9 months away from March 2019 and over one year after the notice to end tenancy was served on the tenant.

Based on the testimony of the landlord, I find that she contradicted her own testimony and evidence. I find that the landlord's family did not intend to come to live in Canada as they were applying for tourist visas and not for immigrant visas. It is not clear whether they have made application for visas at all

Based on the testimony of the landlord and the documents filed into evidence I find that the landlord's family did not move into the rental unit as of seven months after the notice to end tenancy was served and will not be able to enter Canada until they receive their visas. The landlord served the notice in October 2018 and stated that her family applied for visas in January 2019 and as of May 2019 had not received their visas. The landlord did not file any documents to support her testimony regarding the visa applications and the letter dated October 12, 2018 contradicts the landlord's testimony by stating that visas were already applied for in October 2018.

Based on the above, I find that the landlord did not accomplish the stated purpose for ending the tenancy under section 49 and therefore she must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. The monthly rent was \$1,000.00 and therefore the landlord must pay the tenant \$12,000.00 as compensation.

Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents 12 months' rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$12,000.00**.

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 17, 2019

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Residential Tenancy Branch