



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, FF

### **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.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over 77 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be Decided**

Is the tenant entitled to compensation and to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started in May 2013. The monthly rent at the end of tenancy was \$2,032.00 due on the first of each month. The original landlord at the start of tenancy sold the property to the current landlord who took possession of the rental unit on September 01, 2017.

On June 22, 2017, the original landlord 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 *"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."*

The tenant moved out on July 28, 2017 pursuant to the notice to end tenancy for landlord's use of property. The tenant agreed that he received from the landlord, compensation in the amount of one month's rent.

The parties agreed that on June 28, 2017, before the rental property changed hands, the then purchaser RW and his girlfriend visited the rental unit with the intention of dropping off a note to the tenant. The tenant was home and invited the purchaser and his girlfriend into the rental unit.

The tenant filed a copy of the note which indicates that RW was interested in continuing to rent to the tenant. The parties discussed the rental arrangements if the tenancy was to continue. RW informed the tenant that he was familiar with the rental market and that he was asking for a rent of \$3,500.00. He then added that he would be willing to drop the rent to 3,200.00. The tenant stated that RW appeared surprised at the amount of rent the tenant was paying (\$2,032.00). The tenant also filed copies of the text messages between RW and himself, that followed the meeting on June 28, 2017.

The text messages primarily discussed the rental amount that RW was asking for, if the tenancy were to continue after he gained possession of the rental unit. In one text message RW states:

*I was initially asking for \$3,500 to cover my costs. I mentioned to (female tenant's name) that I would do for \$3,200 to your family, as it would work out the same as if it was vacant for September."*

The parties also discussed the issue by telephone and in a conversation on July 04, 2017, the tenant informed RW that he would not be renting the unit at the higher rent. During the hearing RW stated that he was not aware of the amount of rent paid by the tenant and only found out when he received the tenant's evidence package.

On September 01, 2017 RW took possession of the property and will be referred to as the landlord in the remainder of this decision.

The landlord stated that he moved into the rental unit with his girlfriend on the day he gained possession of the rental unit. The landlord stated that prior to moving into the rental unit, he was living about 2 kilometers from the rental unit in a home that he owned.

RW stated that he had advertised his home as available for rent and filed copies of the advertisements. The advertisements are dated August 7 and August 26, 2017 for an availability of September 01, 2017

The tenant's witness testified at the hearing. He stated that he was an immediate neighbor to the east of the tenant and he was aware that the tenant had been given a notice to end tenancy. The witness stated that after the tenant moved out there was no one living in the rental unit for approximately three months after which a family with children moved in.

The witness stated that the new occupants of the home created noise disturbances and he called the landlord several times to complain about the problem. The witness stated that one day he went over to speak with the family that occupied the rental unit. He stated that on that day, he met someone who was doing some tile work in the house and who informed the witness that he was the owner of the property. The landlord agreed that he met the neighbor while he was doing some tile work. The witness stated that from his observations he found that the owner did not live at the rental unit.

The landlord provided a hand-written notarized statement from the family that moved in. The writer indicates that sometime in November 2017 he moved into the rental unit as he was going through a rough patch and needed accommodation for himself and his family. He states that the arrangement was temporary and "*There was no suggestion of us renting from him*". The note goes on to say that he lived downstairs and that when the landlord moved out mid-April 2018, a new tenant moved into the basement effective May 01, 2018.

The landlord filed utility bills as proof of his residence. He explained that the service address and the mailing address were the same for the utility service that was in his name. The landlord also filed a copy of a residential loan agreement which indicates that he was borrowing funds using the owner-occupied rental unit as security. The landlord has filed a copy of just one page of the agreement.

The tenant has applied for compensation pursuant to section 51 in the amount of 2 months' rent plus \$100.00 for the filing fee.

### **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 notice to end tenancy for landlord's use of property.

The reason for the notice was that all of the conditions for the sale of the rental unit had been satisfied and the purchaser had asked the landlord, in writing to give this notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

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

It is important to note that in December 2018, s51(1)(b) was amended to increase the amount of compensation from double to 12 times the monthly rent. At the time this tenancy ended in July 2017, the compensation due to the tenant was double the monthly rent and will apply in in this case, if the tenant is successful in his application.

Based on the testimony and documents filed into evidence by both parties I make the following findings:

1. On June 28, 2017, the landlord attempted to continue to rent the unit to the tenants beyond the effective date of the notice to end tenancy for landlord's use of property.
2. The landlord proposed a rent increase that was not in keeping with Legislation.
3. The landlord's note to the tenant indicated that he would reduce the new proposed rent which would cover a vacancy in September 2017
4. The landlord advertised the availability of his home in multiple advertisements from August 07, 2017 – August 26, 2017.

5. The tenant's witness was credible when he stated that the rental unit was unoccupied for about three months before a family moved in.
6. The testimony of the witness regarding seeing the landlord for the first time while he was doing tile work in the rental unit sometime after November was also credible.
7. The utility bills filed into evidence by the landlord don't prove that he resided at the unit.

Based on the above, I find that the notice to end tenancy was not served in good faith as prior to taking possession of the rental unit, the landlord offered the tenants an extension of their stay at an increased rent. He even referred to a loss of income if the unit remained vacant in September 2017. The landlord did not mention in his text messages the period that the tenancy would be extended for. If the landlord intended to move into the rental unit an end date to the extended tenancy would have been set. The actions of the landlord indicate that he did not intend to move into the rental unit.

The landlord also filed advertisements looking for a tenant for his residence. Shortly after the meeting on June 28, 2017, the tenant informed the landlord that he would be moving out. The landlord waited until August 07, 2017 to start looking for a tenant for his own residence so that he could move into the rental unit on September 01, 2017. If the landlord intended to move into the rental unit he would have started looking for a tenant for his own residence as soon as he knew that this tenant had rejected his offer of an extension of the tenancy and would be moving out.

The landlord also did not provide any proof of the occupants/new tenants of his own residence after he allegedly moved out. He testified that his brother moved in.

Based on a balance of probabilities I find that it is more likely than not that the landlord had no intention of moving into the rental unit.

I find the testimony of the witness who lived in the house adjacent to the rental unit, credible. He stated that the home was vacant for three months before a family with children moved in. This is consistent with the written statement of the person who moved into the rental unit in November 2017.

During the hearing the landlord testified that he only found out how much rent the tenant was paying when he received the notice of hearing.

However, in his conversation with the tenant on June 28, 2017 and the text messages that followed, the parties discussed the rental amount. I find the tenant credible when he stated that the landlord expressed surprise at the amount of rent the tenant was

paying, during the meeting on June 28, 2017. Based on the above, I find that the testimony of the landlord during the hearing about not knowing the amount of rent paid by the tenant was not credible.

Overall, based on my findings of the credibility of both parties and the witness and based on a balance of probabilities, I find that is more likely than not that despite serving the tenant with a notice to end tenancy for landlord's use of property, the landlord had no intention of moving into the rental unit and has not proven that he moved into the rental unit.

Accordingly, I find that the landlord did not accomplish the stated purpose for ending the tenancy under section 49 and therefore he must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement. The monthly rent was \$2,032.00 and therefore the landlord must pay the tenant \$4,064.00 as compensation. Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$4,164.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the monthly 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 **\$4,164.00**.

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: July 17, 2019

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Residential Tenancy Branch