



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, FF

### **Introduction**

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$16,2000
- b. An order to recover the cost of the filing fee.

The Respondent GR failed to appear at the scheduled start of the hearing which was 1:30 p.m. on October 8, 2019. The Respondent BW was present with his solicitor and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the Respondent GR to call in. GR failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The parties were given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. It is deemed received 5 days after mailing. The Policy Guidelines provide that a party cannot avoid service by refusing to claim their registered mail.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Respondent BW by mailing, by registered mail to where he resides. I find that the Application for Dispute Resolution/Notice of Hearing was served on landlord GR by mailing, by registered mail to where he resides on July 6, 2019. It is deemed received 5

days after mailing. I determined there was sufficient service even though the Respondent GR failed to pick up his registered mail. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy between the tenant and BW began in 2010. The rent was initially \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy. The security deposit has been returned to the Tenant. The rent was increased to \$1350 by the time the tenancy ended.

On May 9, 2018 the landlord BW and the Respondent GR (as purchaser) entered into a contract of purchase and sale of the rental property. The closing and possession dates were set at on June 1, 2018. The agreement included a clause that the seller would deliver 60 days notice to vacate by the end of May.

On May 9, 2018 the BW (landlord/seller) gave the tenant a 2 month Notice to End Tenancy in the approved government form RTB-32. The end of tenancy date was blank. The tenant refused to accept it. She testified that other parts of the Notice were blank. On May 17, 2018 the landlord's wife gave the tenant a 2 month Notice to End Tenancy in the approved government form RTB-32 that set the end of tenancy date for July 31, 2018.

The 2 month Notice to End Tenancy sets out the following grounds: "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 testified she vacated the rental unit by July 1, 2018.

She further testified that she witnessed other tenants move into the rental unit in August 2018. She further testified that as far as she is aware the Respondent GR did not move into the rental unit.

BW provided a statement and gave oral testimony as follows:

- He was approached by GR indicating that he was interested in purchasing the rental property in order to build a house for his daughter. BW was not interested initially. However due to health considerations and difficulty in maintaining the property he agreed to sell the property to GR.
- Just before the contract of purchase and sale was entered into GR met with him and explained that his son had kicked him out and he had to move in with a friend on a temporary basis.
- On May 9, 2018 he went with GR to his solicitor's office. They worked out the details and signed the agreement for purchase and sale. At that time GR represented this he would be moving into the rental unit. The contract of purchase sale includes a clause which verifies the purchasers request that BW as seller give the tenant a 60 notice to end tenancy.
- May 9, 2018 was hectic and he failed to include a date by which the tenant was to move out. He wife delivered another completed of the 2 month Notice to End Tenancy on May 17, 2018 or May 18, 2018 as he was out of the country at the time.
- After the sale he assumed GR had moved into the rental property. He was very busy from May to September and had no contact with GR.
- The Residential Tenancy Act was amended on May 17, 2018 changing the right of the tenant to claim 12 months rent rather than 2 months rent if the landlord or purchaser failed to do what is set out in the Notice. .

#### The Law:

Section 51 of the Residential Tenancy Act provides as follows:

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.

...

(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.

Analysis:

After carefully considering all of the evidence I made the following determinations:

- The Respondent GR as purchaser gave the landlord BW notice in writing to give the 2 month Notice to End Tenancy because the purchaser or a close family member intends in good faith to occupy the rental unit as evidence in the contract of purchase and sale.
- The purchaser (GR) failed to take steps to within a reasonable period of time to accomplish the stated purpose for ending the tenancy and failed to use the rental unit for the stated purpose for at least 6 months.
- The Respondent GR failed to attend the hearing and failed to present any evidence that he or a close family member moved into the rental unit.
- I do not accept the submission of the landlords that the operative notice was the Notice to End Tenancy dated May 9, 2018 and as a result the tenant is limited to claiming the equivalent of 2 months rent for the following reasons:
  - The failure of the landlord to do what was required under the Notice occurred months after the new legislation came into effect.

- Section 52 of the Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

**(c) state the effective date of the notice (my emphasis),**

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

I determined the May 9, 2018 Notice to End Tenancy was not effective as it failed to state the effective date of the notice.

- I determined the effective Notice to End Tenancy was the Notice dated May 17, 2018. The new legislation was in effect on that date.
- Section 51(2) and (3) permits a tenant to claim the equivalent of 12 months rent from the landlord or, if applicable, the purchaser who asked the landlord to give the notice. I determined that the landlord (seller) did what was required under the Act and that the Tenants only claim is against the Respondent GR who was the purchaser.
- Section 51(2) and (3) provides that the arbitrator is to consider whether there are extenuating circumstances why the landlord or the purchaser from carrying out the requirements of these sections. There is no evidence of extenuating circumstances.

As a result I determined the tenant has established a claim against the Respondent GR as purchase the sum of \$16, 200 ( $\$1350 \times 12 = \$16,200$ ). I dismissed the other claims

raised by the tenant including the claims for paper route, extra driving, extra work hours diminished and daughters babysitting job as the tenant failed to provide sufficient evidence to prove these claims.

I ordered that the claim against the Respondent BW be dismissed without leave to re-apply.

Monetary Order and Cost of Filing fee

I ordered the Respondent GR pay to the Tenant the sum of \$16,200 plus the sum of \$100 in respect of the filing fee paid for a total of \$16,300. I ordered that the claim against BW be dismissed without leave to reapply

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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: October 08, 2019

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Residential Tenancy Branch