



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding K & G PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 26, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenant sought \$7,987.68 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Notice”).

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant. The tenancy started August 01, 2015 and was a month-to-month tenancy. The parties agreed rent was \$665.64 at the end of the tenancy. Rent was due on the first day of each month.

The Notice was submitted as evidence. It is dated July 24, 2018 and has an effective date of November 30, 2018. The grounds for the Notice are that the tenancy is ending because the Landlord is going to demolish the rental unit. It indicates that the Landlord has obtained all permits and approvals required by law to do the proposed work.

The Landlord submitted an email showing the Notice was sent to the Tenant July 24, 2018 by email with an original sent by registered mail. The Agent confirmed the Notice was emailed July 24, 2018 and sent by registered mail to the Tenant.

The parties agreed the Tenant provided the Landlord a letter July 24, 2018 ending the tenancy as of August 31, 2018. The parties agreed the Tenant vacated August 31, 2018.

The Tenant pointed to a statement in the Landlord’s package that the rental unit was re-rented as of October 22, 2018. The Tenant took the position that the Notice and eviction were disingenuous. In response to the Landlord’s written material, the Tenant submitted that the Landlord should have had their finances in order prior to serving the Notice.

The Tenant submitted photos showing the rental unit is being occupied by someone new.

The Tenant submitted photos showing mail being sent to the rental unit address.

The Landlord submitted written materials that include the following.

A timeline of events showing the following. The Notice was served July 24, 2018. A letter was sent to tenants September 21, 2018 regarding delay of the development. The rental unit was re-rented October 22, 2018.

Submissions stating the following. The Landlord had every intention of demolishing the rental unit when the Notice was served. The development was ready to begin. A demolition permit had been obtained and building permits applied for. "Due to unforeseen Market slowing and that the company had two projects ready to start" the Landlord "could no longer get financing for both projects to start at the same time". The Landlord chose to proceed with the other project because others were involved in it. When this happened, the Landlord sent a letter to the tenants "to recall the Notice" and to inform them the Landlord was delaying the project. The Tenant had already vacated.

The Landlord submitted an application for a demolition permit. The Landlord did not submit documentary evidence showing they were issued a demolition permit.

The Landlord submitted a letter dated September 13, 2018 sent to tenants stating the notices to end tenancy are terminated.

The Agent for the Landlord provided the following relevant testimony. The rental unit was re-rented after the decision was made not to demolish it. Permits were in order for the demolition. The rental unit was not demolished due to the market slowing. The Landlord had two projects to start. There were others involved in the second project. The Landlord decided to start the second project. The Landlord could not get financing because of the market slowing.

I asked the Agent why the Landlord did not submit a copy of the demolition permit and she replied, "I guess I missed that".

I asked the Agent why the Landlord did not submit evidence that they could not get financing as stated. The Agent said she was not sure and that she was not privy to such evidence.

I asked the Agent why the Landlord issued the Notice prior to financing being in place and she replied that she was not sure.

### Analysis

The Notice was issued pursuant to section 49(6) of the *Act* which states:

(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...

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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.

There is no issue that the rental unit was not demolished. Nor is there an issue that the rental unit was re-rented October 22, 2018, less than three months after the Notice was issued. I find the Landlord did not follow through with the stated purpose of the Notice.

The issue is whether there were extenuating circumstances that prevented the Landlord from following through with the stated purpose of the Notice. It is the Landlord who has the onus to prove extenuating circumstances existed.

Policy Guideline 50 deals with extenuating circumstances and states:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

[emphasis added]

I am not satisfied based on the testimony of the Agent and the documentary evidence provided that extenuating circumstances did exist for the following reasons.

First, I question whether the Landlord did obtain a demolition permit given the Landlord did not submit documentary evidence showing that they did. There would have been documentary evidence of this occurring. I would expect the Landlord to have submitted such evidence given their position that the demolition and development were ready to proceed when the Notice was issued.

Second, the Agent, and Landlord in the written materials, state that the demolition and development did not proceed due to a slowing of the market and the Landlord not being able to obtain financing. The Landlord did not submit documentary evidence to support

their submission that they could not obtain financing. I would expect there to be some documentary evidence relating to this. I would expect the Landlord to have submitted such evidence given their position that this was the extenuating circumstance that prevented them from following through with the Notice.

Third, not being able to obtain financing will not usually be an extenuating circumstance. The Landlord should have ensured their finances were in order prior to issuing the Notice. This basis for failing to follow through with the stated purpose of the Notice is akin to the example given in Policy Guideline 50 of a landlord ending a tenancy to renovate the rental unit but not adequately budgeting for the renovations. As indicated in Policy Guideline 50, this will not usually be sufficient. Neither the Agent, nor the Landlord in the written materials, provided compelling evidence or submissions to show that not being able to obtain financing should be considered an extenuating circumstance in this matter. In the absence of compelling evidence or submissions on this point, I am not satisfied not being able to obtain financing was an extenuating circumstance in this matter.

I note that the Tenant ending the tenancy early does not affect her entitlement to compensation under section 51 of the *Act* as stated in section 50(3) of the *Act*.

I also note that the Landlord was not able to cancel, terminate or withdraw the Notice without the Tenant's consent pursuant to Policy Guideline 11. There is no evidence before me that this occurred.

In the circumstances, I find section 51(2) of the *Act* applies. I do not find that there were extenuating circumstances that prevented the Landlord from following through with the stated purpose of the Notice. The Landlord must pay the Tenant compensation equivalent to 12 months rent.

The parties agreed rent at the end of the tenancy was \$665.64. Therefore, the Landlord must pay the Tenant \$7,987.68.

As the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$8,087.68. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$8,087.68. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 27, 2019

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Residential Tenancy Branch