



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This proceeding dealt with a tenant's application for monetary compensation that is payable to a tenant where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the *Residential Tenancy Act* ("the Act"). Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I affirmed the parties.

I explored service of hearing documents upon each other. The tenant testified that he sent two registered mail packages to the landlord, and both packages contained the same documents, although the tenant did not know the dates he sent the packages. The landlord confirmed that he received two registered mail packages from the tenant on September 6, 2019 and that both packages contained the identical documents. I admitted those documents into evidence.

The landlord testified that the packages he received from the tenant did not contain the "proceeding package". I asked the landlord to describe each document in the packages he received from the tenant which he did. The packages received from the tenant included his handwritten Application for Dispute Resolution and evidence; but, the Notice of Dispute Resolution Proceeding and Fact sheet were not received by the landlord.

The tenant acknowledged that he was confused about the documents he had to serve even though he has been through the dispute resolution process before.

I also noted that the tenant had not provided a copy of a *2 Month Notice to End Tenancy for Landlord's Use of Property* even though he was claiming compensation payable where a landlord does not use the rental unit for the purpose stated on the 2 Month Notice. The tenant stated that he had lost his copy of the 2 Month Notice.

Given the tenant's failure to serve the landlord with the proceeding package, as is required under the Rules of Procedure, and a critical piece of evidence which is the 2 Month Notice, I turned to the landlord to determine whether it was be fair to proceed. The landlord stated that he had obtained a copy of the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch and he had a copy of the 2 Month Notice in front of him so he was prepared to proceed. Out of an abundance of fairness to the tenant, the hearing proceeded despite the tenant's failure to serve certain documents.

As for the written responses and evidence submitted by the landlord, the landlord testified that he sent the documents to the tenant via registered mail on November 28, 2019. The tenant confirmed receipt of the landlord's package and I admitted it into evidence.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

The landlord indicated that he had a witness, his father, available to testify and that he was located in another part of the house. The landlord's father remained excluded until he was called to testify. The landlord's witness was examined by me and subject to examination by the tenant.

It should be noted that the tenant had a tendency to try to submit extraneous information as well as information irrelevant to the matter before me. I instructed the tenant a number of times to restrict his submissions to those that are relevant to the one claim before me. I also had to stop the tenant's questioning of the witness as the tenant was trying to make legal arguments with the witness. I instructed the tenant to make legal arguments to me and in front of the landlord, not the witness.

Issue(s) to be Decided

Is the tenant entitled to compensation payable under section 51(2) of the Act?

Background and Evidence

The tenant testified that his tenancy started in around September 2014. The landlord testified that it started October 1, 2014. Both parties provided consistent testimony that the tenancy ended on March 31, 2019. The tenant testified the monthly rent was \$750.00 at the end of the tenancy. The landlord testified that the monthly rent was \$880.00 at the end of the tenancy. The rental unit was described as a self-contained basement suite in a house and the landlord occupied the upper living unit in the house along with his spouse and a child.

The tenant testified that his tenancy came to an end when the landlord served him with a notice to end tenancy so that his family could move into the rental unit. The tenant testified that he lost his copy of the notice to end tenancy. The landlord testified that he served the tenant with a 2 Month Notice to End tenancy for landlord's Use of Property and that he had a copy of the 2 Month Notice in front of him. I asked the landlord to read the reason for ending the tenancy as it appears on the 2 Month Notice, which he did. The stated reason is: *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

Both parties appeared uncertain as to whether the tenant had filed to dispute the 2 Month Notice; however, the landlord testified that he received an Order of Possession and attended a hearing. A search of the Residential Tenancy Branch records revealed that the tenant had file to dispute a 2 Month Notice but that at the hearing the tenant stated he no longer sought to dispute the 2 Month Notice and would be moving out of the rental unit (file number provided on cover page of this decision). The Arbitrator presiding over that case provided the landlord with an Order of Possession since the tenant was withdrawing his request to dispute the 2 Month Notice.

Shortly after vacating the rental unit, the tenant filed an Application for Dispute Resolution seeking compensation for loss of quiet enjoyment, and then the tenant amended the claim on May 31, 2019 to include a claim for compensation equivalent to 12 months' of rent, as provided under section 51(2) of the Act for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act. (file

number provided on the cover page of this decision). A hearing was held on June 25, 2019 and in the decision issued by the presiding Arbitrator on June 25, 2019, the Arbitrator recorded that the landlord made certain repairs to the property, such as relocating a hot water tank, repairing the entry door and cabinet fronts and:

“The landlord stated that his parents visited the unit and asked him to make certain changes to the unit before they would move in. The landlord stated that he has painted most of the unit, has ripped out the flooring and replaced it, has fixed the blinds and done other repairs. The landlord stated that he still has the remainder of painting to do and has to replace baseboard in the bathroom and hallway. The landlord estimated that the unit will be ready for his parents to move in by the end of July 2019.”

“The tenant also stated that he was informed by an information officer that if the landlord’s parents did not move in into the rental unit by May 01, 2019, then the landlord must pay the tenant compensation in the amount of 12 months’ rent. The tenant submitted that as of the date of this hearing the landlord’s parents had not yet moved into the rental unit.”

In analyzing the tenant’s request for compensation equivalent to 12 months’ rent, the Arbitrator concluded:

“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. The effective date of the notice was March 31, 2019.

Based on the testimony and the documents filed into evidence, I find that the landlord was ordered to make electrical changes to the rental unit and these changes were approved by the electrical inspector of the Department of Technical Safety on May 21, 2019. The landlord stated that since then he has been carrying out renovations which will be done by the end of July 2019, after which time his parents will move in.

I find that the tenant has made a premature application for compensation as according to legislation the landlord is required to take steps to accomplish the stated purpose for ending the tenancy within a reasonable time. As of the date of the hearing, the landlord was still in the process of restoring the unit in preparation for his parents to move in. I find that the landlord’s parents are scheduled to move in by the end of July 2019 and if this is not accomplished,

then the tenant is at liberty to make application for the applicable compensation.  
The tenant's application for \$10,560.00 is dismissed with leave to reapply."

[My emphasis underlined]

The tenant filed the Application for Dispute Resolution that is before me on August 19, 2019 and is of the position the landlord's parents did not move into the rental unit by July 31, 2019 as required. The tenant pointed to the decision of June 25, 2019 as the basis for the July 31, 2019 deadline.

The tenant is of the position the rental unit has remained unoccupied by the landlord's parents, or anybody. In support of his position, the tenant submitted that he has driven by the subject property 4 – 5 times per week, for several weeks and did not notice any lights on in the rental unit, with the exception of the night before this hearing, and no additional garbage or recycling. The tenant also stated that he is familiar with the truck the landlord's father owns and the truck has not been seen at the subject property. Rather, the tenant hired a private investigator who determined the landlord's father's truck remains parked at the landlord's parent's home in another town.

The landlord submitted that the rental unit was repaired and renovated and the renovations were completed on July 8, 2019. The landlord testified that his parents took possession of the rental unit on July 17, 2019. The landlord stated that his parents continue to primarily reside in another town, where the landlord's father's truck was seen, and that his parents come to visit the landlord and they drive their small SUV and stay in the rental unit. The landlord submitted that his parents furnished the rental unit. The landlord pointed to text message communications he had with his parent in July 2019, a tenancy agreement he entered into with his parents, and rent receipts for payments his parents gave him for use of the rental unit.

The landlord called his father, referred to by initials GL, to testify. In calling his father as a witness, I could hear the landlord travelling down a set of stairs and knocking on a door before passing the phone to his father. GL was affirmed. GL testified that he is the father of the landlord. GL testified that he and his wife had plans to occupy the rental unit shortly after the tenancy was set to end but that when he and the landlord inspected the rental unit in late March 2019 it was determined that the rental unit ought to be renovated before he and his wife took possession because it smelled badly. After the tenancy ended, GL helped the landlord install new flooring and then GL returned home while the landlord carried on with painting, installing baseboards, and other renovation tasks until the tasks were completed. GL and his wife entered into a tenancy

agreement with the landlord effective July 15, 2019 and took possession of the rental unit on July 17, 2019 and then they moved furniture into the unit.

GL explained that he and his wife maintain their principal residence in the home they have in another town (the interior of the province) but that they have friends and family in the area of the rental unit (located in a city on the west coast). GL testified that he also likes to come to the west coast to salmon fish and his wife likes to shop in the city. GL stated that he and wife prefer not to stay in the landlord's unit above the rental unit since there is only one bathroom and the bedrooms are occupied by the landlord, the landlord's spouse and a child; and, the landlord and his spouse work shift work. As such, it is preferable for GL and his wife to occupy the basement suite and have their own space while they are in town.

GL explained that if he were to drive his truck and camper, the travel costs would be greater than driving their small SUV and staying in a hotel would be expensive. As such, they stay with in the rental unit owned by their son and located in the same house as their son.

The tenant asked GL to describe the address on his drivers' license. GL stated the address on his drivers' license is listed as being his residence in the other town located in the interior.

The tenant asked GL whether he took any pictures of the rental unit when the floor was ripped up. GL stated he had not.

The tenant asked GL whether there was a plan to renovate the rental unit before the tenancy had ended. GL stated that has experience as a contractor and, based on what the landlord had told him about the state of the rental unit, it was determined that the rental unit would need renovating before GL and his wife occupied the unit.

The tenant argued that the Act requires that the landlord or landlord's close family members move into the rental unit as their full time and permanent residence. The tenant explained he determined this by speaking with Information Officers a number of times.

The tenant was of the position the rental unit was not in need of renovations and that the landlord was obligated to ensure his parents moved in within a reasonable amount of time after the tenancy ended and that more than a reasonable amount of time elapsed.

The tenant was of the position the end of the tenancy was based on false pretenses and the landlord should not have ended the tenancy for landlord's use when the landlord was really motivated to renovate the rental unit and make more money.

### Analysis

When a tenancy is ended for landlord's use of property under section 49 of the Act a tenant is entitled to compensation from the landlord. Although the tenant did not provide a copy of a notice to end tenancy issued under section 49 of the Act, the landlord acknowledged that a *2 Month Notice to End Tenancy for Landlord's Use of Property* was served upon the tenant and the tenancy ended due to the notice. Therefore, I accept that the tenancy ended pursuant to a notice to end tenancy issued under section 49 of the Act.

The landlord also described the stated reason on the 2 Month Notice served upon the tenant, which was: *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)*. The tenant did not dispute that was the reason indicated on the notice served upon him and I accept that is the stated reason on the 2 Month Notice served upon the tenant.

Where a landlord does not use the rental unit for the purpose stated on the 2 Month Notice, a tenant may be entitled to additional compensation under section 51(2) of the Act. By way of this application, and the previous application, the tenant seeks the compensation provided under section 51(2) of the Act.

Below, I have reproduced subsections 51(2) and (3):

- (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.

[My emphasis underlined]

The tenant argued that the rental unit has remained unoccupied since his tenancy ended; however, I find there is evidence the rental unit has been used and occupied by the landlord's parents. The landlord provided copies of text message communication with his mother on July 17, 2019 and ferry receipts to demonstrate his parents arrived at the rental unit on July 17, 2019 and his parents were proceeding to take possession of the rental unit on that date, and I find this evidence corroborates the landlord's oral testimony. In contrast, the tenant provided oral testimony that he drove by the rental unit several times and did not see any lights on, except for the night before the hearing, or any extra garbage or recycling; however, I find that evidence in the absence of specific dates, is weak that the rental unit has remained unoccupied since it is entirely possible the unit was occupied at times when the tenant did not drive past the house. Also, it was apparent to me that the landlord's father was in the rental unit during the hearing. It also makes sense to me that the parents' use of the basement suite during their visits is preferable over staying in the more crowded and busy upper level unit, or in a hotel, or a truck camper which they had done in the past. Therefore, I find I am satisfied that the landlord's parents have been using and occupying the rental unit since July 2019.



The tenant argued that the Act requires that the landlord's parents occupy the rental unit as their primary, full time residence and they are not using it as such. The tenant went to efforts to demonstrate the landlord's parents have a house in another town that they ordinarily reside in and they do not ordinarily reside in the rental unit; however, that was not in dispute. Rather, the landlord and his father GL described how GL and his wife stay in the rental unit when they visit their son and other friends and family in the area and participate in other recreational activities such as fishing and shopping. GL and the landlord also testified that GL and his wife furnished the rental unit for their use when they took possession of the unit. It is clear to me that the rental unit is being used by GL and his wife only when they come to town where the rental unit is located to visit people, shop and participate in recreational activities but it is not their full time or primary residence. However, the Act does not specifically require that a rental unit be used primarily or as a full time residence by the occupant and those words are not present in the provision that ended the tenancy.

The reason for ending the tenancy, as stated on the 2 Month Notice served upon the tenant, is provided under section 49(3) of the Act: *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

[My emphasis underlined]

It is important to point out that the landlord, landlord's spouse or close family member of the landlord were "to occupy" the rental unit and the Act does not use words such as "principle residence" or "permanent residence" or "primary residence" or "full time residence". In interpreting statutes, meaning must be given to the words actually used and it is inappropriate to give meaning to words that are not present. Therefore, I reject the tenant's position that the landlord's parent must use the rental unit as their primary or full time residence.

As for the meaning of "to occupy", the Act does not define the word "occupy" or "occupied" or "occupation" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession." As provided Residential Tenancy Policy Guideline 2A, the Residential Tenancy Branch has taken the position that "occupy" does not include vacant possession. In this case; however, I heard and found, for reasons described previously, that the rental unit was not vacant left vacant and that it is furnished and has been used as accommodation by the landlord's parents when they come to town.

As for the tenant's arguments that the landlord's parents did not occupy the rental unit within a reasonable amount of time after the tenancy ended, I find this position has already been heard and decided upon by way of the June 25, 2019 preceding. The Arbitrator in that case concluded the landlord was making repairs and renovating the rental unit so that it was suitable for his parents and that it was reasonable to provide the landlord a reasonable amount of time to complete renovations before his parents moved in. Accordingly, I find a decision has already been made that the landlord had until July 31, 2019 to complete the renovations and in doing so the landlord would be within a reasonable amount of time to use the rental unit for the stated purpose. As described above, I find I am satisfied the landlord's parents did take possession of the rental unit before the end of July 2019. Therefore, I find I am satisfied the landlord has used the rental unit for the purpose stated on the 2 Month Notice within a reasonable amount of time for doing so.

As for the tenant's position that the rental unit did not require renovation, as a property owner, the landlord has the right to determine whether he wants to make renovations or upgrades to the property and it not upon the tenant to determine whether it is appropriate or necessary for the landlord to do so after the tenancy ended. Considering the rental unit was slated for use by the landlord's parents, I find it reasonable that a freshly renovated unit would be desirable for one's parents.

With respect to the tenant's position that the landlord ought to have issued a different notice to end tenancy since he was planning a renovation, I find there is sufficient evidence of a planned renovation before the 2 Month Notice was issued. The subject 2 Month Notice was issued in late January 2019 and the evidence I heard from GL that they had originally planned to occupy the rental shortly after the tenancy was set to end on March 31, 2019 but that after the 2 Month Notice was issued and an inspection was conducted it was determined that repairs and renovations were appropriate before occupancy by the landlord's parents. It is also important to note that not all types of renovations warrant a different type of eviction notice: a *4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* ("4 Month Notice"). A 4 Month Notice may only be issued where the renovation or repair is so significant, usually requiring permits, that it requires the unit to be vacated and the tenancy ended, but in any case, I am satisfied the primary purpose for ending the tenancy was so that his parents could occupy the rental unit and some repairs and renovations were performed to make it suitable for the parents' use and occupancy.

For all of the reasons provided above, I find the tenant has not sufficiently established an entitlement to compensation payable under section 51(2) of the Act and I dismiss his claim in its entirety, without leave to reapply.

Conclusion

The tenant's application is dismissed without leave.

This decision is final and binding, subject only to available review provisions, and 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: December 18, 2019

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Residential Tenancy Branch