



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 August 20, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant and A.T. appeared at the hearing. The Landlord appeared at the hearing with the Co-landlord and P.L. who spoke for the Landlord throughout the hearing. I explained the hearing process to the parties who did not have questions when asked. The Tenant, A.T. and P.L. provided affirmed testimony. Both parties indicated at the outset of the hearing that they were not calling witnesses.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The only issue that arose was in relation to a voice message submitted as evidence by the Tenant. The Tenant advised that it was not served on the Landlord. P.L. agreed the Landlord did not receive this. The Tenant took the position that the voice message should be admitted. P.L. took the position that it should not be admitted. I exclude the voice message as it was not served on the Landlord as required by the Rules of Procedure (the “Rules”).

A.T. was originally named as a tenant on the Application. A written tenancy agreement was submitted as evidence and it only names the Tenant. The Tenant and A.T. took the position that A.T. was a tenant under the tenancy agreement. P.L. took the position that A.T. was not a tenant and in fact the Tenant and A.T. lied about A.T. not living at the rental unit during the tenancy. The only documentary evidence the Tenant and A.T. pointed to in support of their position was the Notice which includes A.T.’s name. Given A.T. is not on the tenancy agreement, and given the position of P.L., I am not satisfied A.T. was a tenant in the absence of further evidence supporting this. I find A.T. was an

occupant with no rights or obligations under the tenancy agreement. Therefore, A.T. is not a party to this dispute and I have removed A.T. from the style of cause.

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 \$10,200.00 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 Two Month Notice to End Tenancy for Landlord’s Use of Property dated January 07, 2019 (the “Notice”).

A written tenancy agreement was submitted as evidence. It was between an agent for the Landlord and the Tenant. The tenancy started July 01, 2014 and was for a fixed term of three months. The parties agreed the tenancy then became a month-to-month tenancy. The parties agreed rent was \$875.00 as of January 2019. Rent was due on the first day of each month. The agreement is signed by the agent for the Landlord and the Tenant.

The Notice was submitted as evidence. It is dated January 07, 2019 and has an effective date of March 15, 2019. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord’s close family member.

The parties agreed the Notice was served on A.T. in person January 07, 2019.

A.T. testified that he and the Tenant vacated the rental unit February 10, 2019. P.L. testified that she does not know when the Tenant vacated but that the Tenant did not pay February rent.

The Tenant testified that the Landlord posted the rental unit for rent after she vacated the rental unit. The Tenant pointed to advertisements submitted as well as emails from

March in relation to the advertisement. The Tenant testified that the agent for the Landlord replied to the email about the advertisement in March. The Tenant testified that P.L. called and left a voice message about showing the suite.

The Tenant submitted photos of the rental unit from move out and submitted the advertisements.

P.L. took the position that the evidence submitted by the Tenant is fraudulent. She denied that the evidence relates to the rental unit.

P.L. testified as follows. The Landlord's son moved into the rental unit in March. He previously lived upstairs with the Landlord. The Landlord's son has "mental health issues" and it was suggested that he move into the rental unit to live semi-independently. This did not go well and the Landlord's son moved back upstairs with his parents in July. The rental unit was not rented out until September 01, 2019 when it was rented to A.K. A.K. is not related to the Landlord.

P.L. testified that the Tenant did not pay February rent and was issued a 10 Day Notice. P.L. took the position that this is why the tenancy ended. P.L. testified that the Tenant never agreed to the Notice being withdrawn or cancelled.

In reply, the Tenant questioned why the Landlord's son did not move into the vacant suite beside the rental unit. The Tenant testified that the house has two basement suites.

In reply, P.L. testified that the second basement suite was full of her sister's furniture because her sister moved out of the country. P.L. testified that the second suite is used as storage and that nobody has lived in it for four years.

The Landlord's written materials state that the Tenant was observed moving January 19 & 20 and it appeared nobody was living in the rental unit the following week.

The written submissions of the Landlord state as follows:

[The Landlord]...decided in consultation with medical staff that it would be beneficial for both them [the landlords] to have his youngest son...live in the suit as the family who required space and pilot independent living.

The Landlord's written materials state that it was the recommendation of health professionals that they pilot an independent living arrangement for their son.

The Landlord submitted a signed letter from the Landlord's son stating he moved into the rental unit March 04, 2019 and stayed until July. It states that he moved back upstairs as it was too much for him to live on his own.

### Analysis

There was no issue that the Tenant was served with the Notice. P.L. acknowledged the Tenant never agreed to the Notice being withdrawn or cancelled. Pursuant to Policy Guideline 11, the Landlord issuing a 10 Day Notice did not cancel the Notice. Also pursuant to Policy Guideline 11, the Landlord was not able to cancel, terminate or withdraw the Notice without the Tenant's consent. I do not find that the 10 Day Notice affects the Tenant's entitlement to compensation under section 51 of the *Act* based on the Notice.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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.

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.

[emphasis added]

It is the Tenant as applicant who has the onus to prove the claim pursuant to rule 6.6. of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I find it more likely than not that the rental unit was posted for rent in March as stated by the Tenant. I find this based on the advertisements, photos of the rental unit and email from the agent submitted in evidence by the Tenant. There is nothing about this documentary evidence that causes me to question the authenticity of the documents. The Tenant has submitted photos of the kitchen and bathroom in the rental unit from move out which match the photos in the advertisements. Further, the Landlord submitted a photo of the bathroom sink which matches the bathroom sink in the Tenant's photo and the advertisement. I find this based on the color and pattern of the counter, the shape and color of the sink and the piece of something on the cupboard knob which is shown both in the Landlord's photo and the Tenant's photo. In the circumstances, I find it more likely than not the advertisements are of the rental unit. The advertisements show the rental unit is available April 01.

Further, the Tenant submitted an email from March which appears to be from the Landlord's agent given the name. Again, there is nothing about this piece of evidence that causes me to question its authenticity.

P.L. took the position that the Tenant's evidence is fraudulent. Neither the Landlord nor P.L. provided compelling testimony or evidence to support this position. For example, the Landlord did not provide photos of the rental unit showing it is not the unit shown in the advertisements. This would have been simple to provide, particularly given the Landlord submitted other photos of the rental unit. The Landlord did not call the agent at the hearing to provide affirmed testimony that the email in evidence was not sent by

him. The Landlord did submit a witness statement from the agent; however, it does not address the email submitted by the Tenant. Again, this would have been simple evidence to provide.

I acknowledge that it is the Tenant who has the onus to prove the claim. I find the Tenant has satisfied me it is more likely than not the rental unit was posted for rent once the Tenant vacated. The Landlord has not provided compelling testimony or evidence that causes me to question the documentary evidence of the Tenant. I am not satisfied the Tenant has submitted fraudulent evidence. This finding causes me to question both the reliability and credibility of the Landlord and P.L. given their position on this issue.

The Tenant's evidence aside, I find on the Landlord's own evidence that the Landlord did not use the rental unit for the stated purpose of the Notice for six months after the effective date of the Notice. The effective date of the Notice was March 15, 2019. I note that this effective date does not comply with section 49(2)(a) of the *Act* and would have automatically changed to March 31, 2019 pursuant to section 53 of the *Act*. In any event, using the March 15, 2019 date, the Landlord was required to use the rental unit for the stated purpose until September 15, 2019. The Landlord did not do so as the Landlord acknowledged the rental unit was rented to A.K., a non-family member, September 01, 2019. I find section 51(2) of the *Act* applies.

The issue here is whether the Landlord has proved extenuating circumstances. I do not accept that the Landlord has. The Landlord's position is that his son moved into the rental unit on the recommendation of health professionals who suggested trying a semi-independent living arrangement. The Landlord's position is that this did not work after five months and his son moved back upstairs.

Extenuating circumstances are described in Policy Guideline 50 which 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.

I do not find the reasons for failing to follow through with the stated purpose of the Notice provided here akin to the examples set out above. I find from the evidence that the Landlord's son moving into the rental unit was a "pilot" meaning a test or a trial. I do not find that a "pilot" or test or trial not working out for six months is an extenuating circumstance that relieves the Landlord of his obligations under section 51 of the *Act* in the absence of further evidence to support this.

Further, as stated above, I have questions about the reliability and credibility of the Landlord and P.L. In these circumstances, I have looked at the documentary evidence to support their position about the Landlord's son. I have reviewed the Landlord's documentary evidence and do not find there is sufficient documentary evidence to support the Landlord and P.L.'s position about why the rental unit was not used for the stated purpose for six months.

In the circumstances, I am satisfied the Landlord failed to use the rental unit for the stated purpose of the Notice for six months after the effective date. I am not satisfied extenuating circumstances apply. The Landlord is required to pay the Tenant the equivalent of 12 times the monthly rent.

Based on the agreement of the parties, I find rent at the end of the tenancy was \$875.00. The Tenant is entitled to \$10,500.00 pursuant to section 51 of the *Act*.

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 \$10,600.00. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$10,600.00. 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: December 16, 2019

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Residential Tenancy Branch