



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

On September 13, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”).

Both the Tenant and the Landlord attended the hearing. As well, S.K. attended the hearing as counsel for the Landlord. The Tenant and the Landlord provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on September 14, 2019. The Landlord confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

She also advised that she did not submit any evidence for consideration on this file.

The Landlord advised that her evidence was served to the Tenant by regular mail on December 29, 2019. The Tenant acknowledged that she received this evidence on January 9, 2020, that she had read it, and that she was prepared to respond to it. Although this evidence was not served within the timeframe requirements in accordance with Rule 3.15 of the Rules of Procedure, as the Tenant was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that she believes the tenancy started on or around November 2018 and the tenancy ended when she vacated the premises on or around July 28, 2019. Rent was established at \$1,200.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. All parties agreed that the Landlord purchased the rental unit on or around May 2019, that there were two basement suites, and that the Tenant occupied one of them.

All parties agreed that the Notice was served to the Tenant on or around May 20, 2019. The reason the Landlord checked off on the Notice was because "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 effective date on the Notice was noted as July 31, 2019.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by the Landlord as it is essential to the matter at hand. While S.K. was faxing the Notice, I went over the details of the Notice with the Tenant to confirm that it complied with Section 52 of the *Act*.

A copy of this Notice was provided by fax after the hearing concluded. However, upon review, S.K. inexplicably faxed a "Tenant Occupied Property – Buyer's Notice to Seller for Vacant Possession" instead of the requested Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant submitted that she returned to the rental unit approximately four or five weeks after she gave up vacant possession of the rental unit as she was seeking any past mail. She stated that she knocked on the door and a young male answered. She asked him if he lived there and if he was related to the Landlord. He confirmed that he lived there and that he was not related to the Landlord. She did not get his name or have any proof of this interaction. She stated that she then went to the Landlord's front

door and knocked. A girl answered the door and gave the Tenant her mail. As it is her belief that someone other than a close family member of the Landlord is living in the rental unit, she is seeking compensation in the amount equivalent to twelve months' rent (**\$14,400.00**) pursuant to Section 51(2) of the *Act* as she was served the Notice and the Landlord failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

The Landlord advised that she does not know who this male could have been but she speculated that it could have been her son. She stated that her parents moved into the rental unit in the middle of August 2019 and have lived there since. She submitted, as documentary evidence, signed, sworn affidavits from herself, her parents, and a tenant in the adjoining second basement suite confirming that the Landlord's parents have been living in the rental unit since the effective date of the Notice. The Landlord also provided copies of her parents' identification and their financial statements confirming that their address is that of the rental unit.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

While a copy of the Notice was not provided, based on the information I have received from the Tenant, I am satisfied that the Notice has complied with the requirements as to the form and content of Section 52 of the *Act*. As such, I am satisfied that the Notice meets all of the requirements of Section 52.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, when reviewing the totality of the evidence before me, what I have to consider is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

I understand the Tenant's concerns with respect to her doubts that the Landlord did not use the property for the stated purpose; however, the reason for the Notice was that the Landlord or close family member would occupy the rental unit. In addition, the burden of proof is on the Tenant to substantiate her claims. While she has provided testimony about her doubts that the rental unit is occupied by someone other than the Landlord or the Landlord's parents, I find that most of this is based on speculation, without definitive

evidence such as statements from others confirming that the rental unit is indeed occupied by someone other than the Landlord's parents.

When weighing this against the Landlord's documentation and her affirmed testimony that her parents live in the rental unit, I do not find that the Tenant's testimony is persuasive or compelling enough to outweigh the Landlord's evidence that her parents moved into the rental unit on or around August 2019. As the definition of close family member would include her parents, on a balance of probabilities, I am satisfied that the Landlord used the property for the stated purpose and did not contravene the *Act* in this circumstance. As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, and I dismiss her claim on this issue in its entirety.

### Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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: January 13, 2020

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Residential Tenancy Branch