



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On September 9, 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”).

The Tenant attended the hearing and the Landlord attended the hearing as well, with M.B. attending as her agent. All in attendance provided a solemn affirmation.

On September 19, 2019, the Tenant amended his Application to request recovery of the filing fee pursuant to Section 72 of the *Act*; however, he was not sure if he served this Amendment to the Landlord. M.B. confirmed that the Landlord was not provided with this Amendment and opposed that this be accepted. However, a copy of this Amendment was included in the Landlord’s submissions of evidence. As such, I am satisfied that the Landlord was served with a copy of this Amendment and I will consider the Tenant’s request for recovery of the filing fee as well.

The Tenant advised that his daughter served the Notice of Hearing package and some evidence, by hand, to the Landlord at her place of employment on September 19, 2019 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Respondent was served the Notice of Hearing package and some evidence.

The Tenant stated that he served the rest of his evidence to the Landlord by email, as per a Substituted Service Order, on or around December 15, 2019, December 30, 2019, and January 6, 2020. The Landlord confirmed receipt of this evidence, and she advised that she had read the evidence, reviewed it, and that she was prepared to respond to it. While some of this evidence was not served within the timeframe requirements of Rule

3.14 of the Rules of Procedure, as the Landlord was prepared to respond to this evidence, I have accepted it and will consider it when rendering this decision.

The Landlord advised that she served her evidence to the Tenant by posting it to his door on November 13, 2019 and the Tenant confirmed that he received this on November 14, 2019. As well, she stated that she served more evidence to the Tenant by email on January 6, 2020 and the Tenant confirmed that he received this package. He stated that he had read the evidence, reviewed it, and that he was prepared to respond to it. While service of some of the Landlord's evidence does not comply with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Tenant advised that he was prepared to proceed, 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 monetary compensation in the amount of 12 months' rent based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recovery of the filing fee?

#### 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.

All parties agreed that the tenancy started prior to when the Landlord purchased the rental unit on or around October 5, 2018 and the tenancy ended on April 15, 2019 when the Tenant gave up vacant possession of the rental unit based on being served the Notice. Rent was established at \$923.00 per month, due on the first day of each month. A security deposit of \$450.00 was also paid.

Both parties agreed that the Notice was served on March 13, 2019 and the reason the Landlord checked off on the Notice was that "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 Landlord indicated on the Notice that the effective end date of the tenancy was May 30, 2019.

The Tenant advised that after vacating the rental unit, he moved into an apartment down the hall from the rental unit. He monitored the activity of the rental unit and only saw the Landlord enter two or three times in April and May. He does not believe that the Landlord lived there after he vacated the rental unit, and it was still unoccupied as of June 1, 2019. In July, a new tenant moved into the rental unit and it was discovered that this person was renting the rental unit but was not related to the Landlord. As such, his position is that he is owed compensation in the amount equivalent to twelve months' rent, or **\$11,076.00**, pursuant to Section 51(2) of the *Act* as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

M.B. stated that the Landlord purchased the property and had no intention or desire to be a landlord. She stated that the Landlord has difficulties with English and that she was not familiar with the rules and regulations related to being a Landlord.

The Landlord advised that she replaced the carpet after the Tenant gave up vacant possession of the rental unit of May 1, 2019. She explained her relationship with her ex-husband and she lived at both the place that they shared and the rental unit. In addition, due to her changing work schedule, it was sometimes more convenient to stay at his place. She stated that she rented out the rental unit to a new tenant on July 15, 2019 with the understanding that she would still have access to live in the second bedroom so that she could sleep there occasionally.

The Landlord was asked to explain if there were any extenuating circumstances that prevented her from using the rental unit for the stated purpose for a period of six months from the effective date of the Notice. M.B. stated that the Landlord could not afford to live in both the rental unit and at the other place she stayed. She stated that there were "lots of things that [she] did not know like the cost of bills". She advised that the Landlord has had to pay lots of money for renovations and that she supports her family back home by sending them money.

The Landlord stated that she did not occupy the rental unit daily but slept there approximately half the time after the effective date of the Notice. While she signed a tenancy agreement with her new tenant using the Residential Tenancy Branch form, and she collected a security deposit, this agreement was written up as a shared roommate situation where it was agreed that the Landlord could use the second bedroom and that the kitchen and bathroom would be shared. She did not provide a copy of this tenancy agreement as documentary evidence, but she cited an email from her tenant confirming this arrangement. She also advised that the rental unit was not her primary residence.

The Tenant questioned the legitimacy of the Landlord's submissions as he pointed out date discrepancies in the Landlord's own evidence about when she moved into the rental unit. Furthermore, he questioned her intention to move into the rental unit as she had increased his rent just prior to service of the Notice. Finally, the Landlord's pictures of the room she supposedly slept in is full of boxes and paint cans and a person could not reasonably sleep there.

### 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.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on March 3, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**51 (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.*

With respect to this situation, I also find it important to cite Policy Guidelines # 2A and # 50. Policy Guideline # 2A clarifies the six-month occupancy requirement stating that “The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).”

Furthermore, Policy Guideline # 50 notes that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, this Policy Guideline outlines the following about extenuating circumstances: “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

When reviewing the evidence and testimony before me, the Landlord advised that the Notice was served in good faith. However, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act*, and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. While the Landlord submitted that she rented the rental unit under a roommate agreement and that she had slept there approximately half the time since the effective date of the Notice until September 2019, I find it important to note that the Landlord states in her evidence that she decided to move back with her ex-husband on July 1, 2019 and that she “decided to put all [her] household items into the spare room and lock and secure it. Then I had a good friend of mine help advertise it for rent within two weeks I found a new tenant to rent 1 bedroom for \$1,100.00.”

I find that this statement contradicts her claims that she slept in the second bedroom as it is clear that this room was used for storage purposes. In fact, this statement actually supports the pictures that she submitted as documentary evidence demonstrating that this room was indeed a storage room and would not likely be suitable for habitation. Finally, while the Landlord advised that her tenancy agreement with the new tenant was a roommate arrangement where the tenant would share the rental unit with the Landlord, I note that the Landlord has not submitted this agreement as evidence to confirm that this was explicitly stated in the agreement. I do not find that the tenant's email, that the Landlord relied upon to support her position of a roommate agreement, bolsters her argument. When reading this email, all it confirms is that the tenant rents the rental unit as a one- bedroom space and that the second bedroom is solely for the Landlord's storage. There is nothing in this email which indicates that the Landlord also lives there.

I find that the dubious nature of the Landlord's submissions causes me to doubt the reliability of the Landlord's credibility and submissions on the whole. Furthermore, as the Landlord confirmed that the rental unit was not her primary address, I am satisfied that the Landlord neither lived in the rental unit nor did she rent out a portion of the rental unit to another tenant as a roommate agreement while she lived there. Consequently, I am not satisfied that the Landlord used the rental unit for the stated

purpose within a reasonable period of time after the effective date of the Notice, for at least six months.

In turning my mind to the Landlord's submissions of any extenuating circumstance that prevented her from using the rental unit for the stated purpose for at least six months after the effective date of the Notice, while M.B. stated that the Landlord could not afford to live in two separate places and that there were unexpected expenses that the Landlord did not take into account, I am not satisfied that the Landlord would not have been aware of the cost of living in the rental unit prior to serving the Notice. Furthermore, I do not find it reasonable that the Landlord could not have calculated many of these costs prior to deciding whether or not to serve the Notice. Ultimately, I am not satisfied that the reasons put forth by the Landlord or M.B. would constitute extenuating or unforeseen circumstances as contemplated by the *Act*.

As the Landlord did not occupy the rental unit for at least six months after the effective date of the Notice but re-rented it, I am satisfied that the Landlord has failed to meet any of the requirements to use the rental unit for the stated purpose as per the *Act*.

As I do not find that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months, I am satisfied that the Tenant has substantiated his claim that he is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$11,076.00**.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

12 months' compensation	\$11,076.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$11,176.00</b>

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$11,176.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 15, 2020

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Residential Tenancy Branch