



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to sections 51 and 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by their legal counsel. The parties confirmed that they had exchanged their documentary evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

The hearing proceeded and completed on this date.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

### Background and Evidence

The tenant gave the following testimony. The tenancy began on September 1, 2017 and ended on July 1, 2019. The monthly rent was \$1400.00 due on the first of each month. The tenant testified that a Two Month Notice to End Tenancy for Landlords Use of Property was served to her on May 1, 2020. The tenant noticed that the landlord dated the notice May 1, 1973. She brought this to the landlords' attention that the date was wrong and served with another notice property dated May 7, 2019 with an effective date

of July 1, 2019. The ground for the Notice was that the rental unit would be occupied by the landlord or the landlord's spouse or close family member of the landlord. The tenant testified that the landlord had advised her that her mother would be moving into the property. The tenant testified that the landlord had listed her property for sale and was showing the unit to potential buyers.

The tenant testified that she thought it was strange that the landlords had their property for sale, yet she was served with a notice to move out for her mother to move in. The tenant testified that the property did sell in August 2019 and that the landlord's mother never moved in. The tenant testified that the notice was given because the property was for sale and that is not a legal basis to issue a notice. The tenant seeks requests twelve months rent as compensation in the amount of \$16, 800.00.

The landlords counsel made the following submissions. Counsel submits that the landlords were honest and transparent throughout the process. Counsel submits that the landlord's mother had listed her own residence for sale and that she was going to move into the subject property. Counsel submits that the landlord also had her property for sale but was clear and forthright with the tenant about their desire to sell throughout.

Counsel submits that as a result of the market, the landlords' mother was unable to sell her property and therefore did not move into the subject unit. Counsel submits at the time of issuing the notice the landlord and her mother acted in good faith, were honest, transparent and were willing to be flexible with the move out dates in an effort to make the tenant comfortable. Counsel submits that the tenants claim should be dismissed.

### Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. I accept counsel's submission that the landlords were very forthright and transparent with the tenant as to why they issued the notice.

However, the landlord did not use the unit for the stated purpose as noted on the Notice which is the basis of the tenant's application. Counsel submits that the market did not allow for the sale of the landlords' mothers home and thus resulted in her not being able to move in. I find the reasons submitted by counsel to be an insufficient reason to qualify as extenuating circumstances, accordingly; I find that the tenant is entitled to compensation.

The Act provides that compensation is payable, **regardless of intention** if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am satisfied that the tenant is entitled to \$1400.00 x 12 months = \$16800.00.

### Conclusion

The tenant has established a claim for \$16,800.00. I grant the tenant an order under section 67 for the balance due of \$16,800.00. This order may be filed in the Small Claims 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 24, 2020

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Residential Tenancy Branch