



# 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* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed that the landlord received the tenant's application for dispute resolution via registered mail on September 13, 2019. I find that the landlord was served with the tenant's application for dispute resolution on September 13, 2019 in accordance with section 89 of the *Act*.

### Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below. I informed both parties in the hearing that it is their job to present their case and identify how the evidence submitted is relevant. I informed both parties that evidence not presented may not be included in my decision.

Both parties agreed to the following facts. This tenancy began on February 1, 2018 and ended on February 17, 2019, pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), which was not contested by the tenant. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$100.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant is seeking 12 months' rent compensation, pursuant to section 51(2) of the *Act*, as she alleges that the landlord did not move into the subject rental property after she moved out.

The landlord testified that he works in a city approximately two hours away from the subject rental property from Monday to Friday and that he drives to the subject rental property on Fridays after work and lives at the subject rental property until Sunday evening when he returns to work in another city.

The landlord testified that he has been living at the subject rental property on weekends since the tenant moved out, save for three weekends where he had other plans. The landlord entered into evidence the following documentation evidencing his residence at the subject rental property:

- a voter registration card for the October 21, 2019 election which lists his address as that of the subject rental property;
- a letter from his employer dated December 9, 2019 stating that the landlord's address on his payroll documents is that of the subject rental property;
- daily hydro consumption reports from February 20, 2019 to September 3, 2019 showing spikes and dips in energy consumption through the week;
- telephone bills from February 22, 2019 to September 7, 2019 showing numerous calls made from the subject rental city;
- a paystub dated May 6, 2019 showing the address of the subject rental property; and
- bank records from February 10, 2019 to September 19, 2019 showing purchases in and around the subject rental city.

The tenant testified that she did not believe that the landlord resided at the subject rental property every weekend because she has walked and driven by the subject rental property and has not seen the landlord at the subject rental property very often. The tenant entered into evidence photographs of the subject rental property showing the landlord's vehicle not at the subject rental property. The tenant's submissions state the photographs were taken on:

- Wednesday July 10, 2019;
- Saturday July 13, 2019;
- Monday July 15, 2019;
- Monday July 22, 2019;
- Saturday August 24, 2019;

- Friday, August 30, 2019;
- Friday September 6, 2019;
- Wednesday, September 9, 2019; and
- Monday, December 9, 2019.

The photographs entered into evidence do not have date stamps on them.

The tenant's evidence description on the service portal website states that the landlord attended at the subject rental property on August 24, 2019, contradicting the photographic evidence entered by the tenant.

The tenant testified that she didn't believe the landlord would drive to the subject rental property every Friday after working a full day of work. The landlord testified that he usually gets off work at around 2:00 p.m. on Fridays and would be home between 5:00 pm and 5:30 pm.

The tenant testified that even if the landlord was at the subject rental property on the weekends, that only amounted to the landlord residing at the subject rental property 26% of the time. The tenant argued that a 26% occupancy did not constitute residing at the subject rental property.

The tenant testified that the landlord acted in bad faith when he evicted her. The tenant testified that the landlord evicted her because she made several requests for repairs which the landlord refused to fix.

### Analysis

Section 49(3) of the *Act* states that 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(2) of the *Act* states that 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The onus of this application falls on the tenant.

In this case, the tenant must prove, on a balance of probabilities, that the landlord has not taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or the landlord has not used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

I find that the tenant has failed to meet the required burden of proof. The tenant testified that the landlord did not reside at the subject rental property most weekends. The evidence entered by the tenant in support of her testimony were nine undated photographs showing that the landlord's vehicle was not at the subject rental property when the photos were taken. I find that the photographs, five of which were taken during the week, when the landlord testified he was not at the subject rental property, do not prove that the landlord does not reside at the subject rental property on most weekends. The photographs only show that the landlord was not at home the moment the photographs were taken.

I also note that in one evidence submission the tenant stated that the landlord was not at the subject rental property on August 24, 2019 and in another evidence description stated that the landlord attended at the subject rental property on August 24, 2019. Due to the conflicting evidence, I give little weight to the tenant's testimony as to when the photographic evidence was taken.

Based on the evidence submitted by the landlord, I find that the landlord occupies the subject rental property from Friday to Sunday, most weekends of the year. I find that the *Act* and Residential Tenancy Policy Guidelines do not restrict the definition of occupation to a quantity of time other than that the subject rental property cannot stand completely vacant. I find that the landlord has not left the property vacant and occupies the subject rental property for the purposes of the *Act*. I therefore find that the landlord does not owe the tenant 12 months' compensation, pursuant to section 51(2) of the *Act*.

I note that the majority of the tenant's evidence focused on the tenant's allegation that the landlord ended the tenancy in bad faith. Bad faith is a relevant argument for disputing a Two

Month Notice to End Tenancy for Landlord's Use of Property; however, it does not play a role in a claim for compensation under section 51 of the *Act*. I make no finding on whether or not the landlord acted in bad faith as it is not relevant to my decision.

Based on my above findings, I dismiss the tenant's application without leave to reapply.

### Conclusion

The tenant's application is dismissed 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 03, 2020

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Residential Tenancy Branch