



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation by the landlord.

The tenant, his advocate, and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed receiving the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

### Background and Evidence

The tenant submitted that this tenancy with another landlord began in the spring of 2002 and ended on June 30, 2019. The monthly rent at the end of the tenancy was \$572.50.

The tenant's monetary claim is \$6,870.00 for 12 months' compensation for receiving a landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), as it has not been used for the stated purpose listed on the Notice.

In support of this claim, the tenant testified that he received the Notice from his former landlord, which listed an end of tenancy date of July 1, 2019. The tenant submitted a copy of the Notice, which was signed by his former landlord, but not dated. As a reason for ending the tenancy, the former landlord listed that all 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 tenant submitted a copy of the Notice.

The tenant said he moved out of the rental unit on June 30, 2019 pursuant to the Notice.

The tenant's advocate submitted that the landlord's address seems to be another address, not the one for the rental unit.

The tenant's advocate submitted that the rental unit, a duplex, was listed for rent on a website shortly after the end of the tenancy. Further, the tenant's sister communicated with the landlord via the website inquiring about renting the former rental unit, and was informed it was available for rent.

The tenant's advocate submitted that the rental unit is not currently being used for the stated purpose.

The tenant's additional evidence included a copy of the rental listing and the email communication between the tenant's sister and the landlord.

*Landlord's response-*

The landlord acknowledged not living in the rental unit. The landlord explained that in February or March, he began looking around for a safer place for his children, which prompted him to buy the residential property. The landlord submitted that he intended to move into one side of the duplex, but has not. The landlord explained that his wife was pregnant at the time and ultimately gave birth to his son on July 14, 2019.

The landlord submitted that his wife had suffered severe post-partum symptoms after the birth of his first child, and was admitted to a psychiatric hospital as a result.

The landlord submitted that the stress leading up to the purchase of the home, his wife became overwhelmed from the stress of a toddler and the prospect of moving. As a precaution in order to avoid a repeat of the post-partum symptoms, the landlord decided not to move in, and as the rental unit could not sit empty, he decided to rent it.

The landlord submitted a copy of his son's birth certificate and some of his wife's medical records.

*Cross-examination from tenant's advocate-*

The advocate had the landlord confirm that the rental unit was advertised for \$1,500.00 and rented for \$1,450.00.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that the tenant's previous landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of July 1, 2019. The tenant complied with the move-out date.

The landlord marked the Notice indicating that all 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.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

I accept the tenant's evidence, along with the landlord's confirmation, that the landlord listed the rental unit for rent shortly after the effective date of the Notice. While the exact date the rental unit was listed is unknown, the tenant's evidence, the email communication between his sister and the landlord, confirms that on August 7, 2019, the rental unit was already re-rented. The landlord mentioned to the tenant's sister that the other side of the duplex would be available in October or November 2019.

I therefore find that the rental unit was not used for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, July 1, 2019.

While the landlord did not specifically mention that extenuating circumstances prevented him from using the rental unit for the stated purpose, I infer his response at the hearing amounted to this argument.

Residential Tenancy Policy Guideline 50 provides examples of extenuating circumstances, such as death of the close family member intending to occupy the rental unit.

I do not find extenuating circumstances prevented him from using the rental unit for the stated purpose. The landlord's spouse was already pregnant upon the purchase of the residential property and the medical condition suffered by his spouse was two years earlier. The landlord would have been well aware of any related stress of moving prior to the purchase of the residential property.

I therefore find on a balance of probabilities and from my interpretation of the Policy Guideline 50 that the landlord has failed to provide sufficient evidence that extenuating circumstances prevented him from using the rental unit for the stated purpose.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

As a result, I grant the tenant a monetary award of \$6,870.00 as requested, the equivalent of monthly rent of \$572.50 for 12 months.

I grant and issue the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$6,870.00.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$6,870.00 is granted and he has been granted a monetary order for that amount.

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: February 7, 2020

---

Residential Tenancy Branch