



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, RPP, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The female landlord ("female purchaser") did not attend this hearing, which lasted approximately 40 minutes. The tenant and the male landlord ("purchaser") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The purchaser confirmed that he had permission to represent the female purchaser at this hearing (collectively "purchasers").

The purchaser confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the purchasers' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the purchasers were duly served with the tenant's application and the tenant was duly served with the purchasers' evidence.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 26, 2019 ("2 Month Notice"). A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is October 31, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Both parties agreed that the “landlord” is the former landlord for the tenant’s tenancy and the seller of the rental unit. Both parties agreed that the tenant paid rent and the security deposit to the landlord and he moved out before the purchaser took possession of the rental unit.

The tenant did not provide any submissions regarding his claim for a return of his personal property. Accordingly, this portion of his application is dismissed without leave to reapply.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claims and my findings are set out below.

The tenant stated the following facts. This tenancy began approximately 6.5 years ago and ended on October 25, 2019 with the landlord. Monthly rent in the amount of \$1,537.50 was payable to the landlord on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed.

The tenant seeks a monetary order of \$19,050.00 plus the \$100.00 application filing fee. The purchasers dispute the tenant’s application.

The tenant seeks \$600.00 for the return of his security deposit. He said that the law requires the landlord to transfer the deposit to the purchasers of the rental unit. He claimed that he did not ask the landlord for his deposit back because the law said it had to be transferred to the purchasers.

The purchasers dispute the tenant’s claim. The purchaser stated that he did not receive the tenant’s security deposit from the landlord, and the purchasers do not have it in their possession.

The tenant seeks compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$1,537.50.00, totaling \$18,450.00. The tenant claimed that because the purchasers did not use the rental unit for the purpose on the 2 Month Notice, he is entitled to compensation.

The tenant said that he vacated the rental unit, pursuant to the 2 Month Notice. Both parties agreed that the reason indicated on the 2 Month Notice was:

- *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 tenant stated that the purchasers did not move into the rental unit after the tenant vacated. He said that he saw advertisements for re-rental at \$2,000.00 and the purchasers provided a tenancy agreement for new tenants, as of November 15, 2019. He maintained that he got two 2 Month Notices, the other dated July 31, 2019 for the same reason with a different purchaser's name on it, which he said was suspect. He maintained that the purchasers did not have any permits in place to demolish the rental unit, they rented the unit two weeks after the tenant moved out, and even if the purchaser's parents could not move in, his brother and sister did not move in either. The tenant confirmed that the purchasers bought the rental unit and asked for the 2 Month Notice to be issued when the purchaser's father was already in India and in the hospital in July 2019.

The purchaser said that he believes his realtor issued a written notice to the landlord for the purchaser's mother and father to move into the rental unit. He said that it was referenced in the contract of purchase and sale that was provided for this hearing. He claimed that the purchasers bought the rental unit in July or August 2019 and they took vacant possession, as requested, on November 7, 2019. He confirmed that after purchasing the rental unit, his father fell ill while visiting India and was hospitalized for one month. He said that his father was transferred to a different hospital for another few weeks and is still undergoing medical treatment in India. He stated that due to the COVID-19 pandemic and travel restrictions, his parents cannot return to Canada. He referenced the numerous medical records provided for this hearing. He explained that he had to re-rent the unit as of November 15, 2019, to new tenants, for a short six-month tenancy agreement, because he was told that the rental unit would not be covered by insurance if it was left vacant. The purchasers provided a copy of this new tenancy agreement. The purchaser claimed that he was not trying to make a profit or

intending to re-rent unit and that is why the contract is a short time period. He maintained that there were too many people living in his own house, so he wanted his parents, brother and sister-in-law to live in the rental unit, but since his father fell sick, none of them could move in. He said that eventually he wants to demolish and build a new unit so he can live at the rental property, which is close to a school for his children.

### Analysis

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord or purchaser does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

*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.*

I make the following findings on a balance of probabilities. The tenant vacated the rental unit on October 25, 2019, pursuant to the 2 Month Notice, which was issued by the landlord for the purchasers or their close family members to move into the unit. Although the tenant moved out earlier than the October 31, 2019 effective date of the notice, he is entitled to do so under the *Act*. The purchaser agreed that his parents did

not move into the rental unit, as intended. He agreed that the purchasers re-rented the unit as of November 15, 2019 for a rent of \$2,000.00 per month, where the new tenants still reside.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

*E. 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.*

I find that the purchasers showed extenuating circumstances prevented them from using the rental unit for the purpose in the 2 Month Notice. The purchasers provided numerous medical records, showing that the purchaser's father was in the hospital for extended periods of time and receiving medical treatment in India, since July 2019. I accept the purchaser's documentary and testimonial evidence that his father is still undergoing medical treatment in India and is unable to return to Canada due to the COVID-19 pandemic travel restrictions. I do not accept that the purchasers could have known at the time they purchased or took possession of the rental unit, that the purchaser's father's medical condition would deteriorate or that the COVID-19 pandemic would occur, preventing travel in and out of Canada.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$1,537.50, totalling \$18,450.00, from the purchasers. The tenant's application in this regard is dismissed without leave to reapply.

I dismiss the tenant's application to recover the \$600.00 security deposit from the purchasers, without leave to reapply. I find that the purchasers were not given this deposit by the tenant or the landlord, and they do not have it in their possession.

Since the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the purchasers.

### Conclusion

The tenant's entire 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: April 09, 2020

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Residential Tenancy Branch