



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 03, 2020 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified as follows. The hearing package and evidence were sent to the Landlord by registered mail on January 08, 2020. The package was sent to the Landlord’s address on a notice to end tenancy issued to her. The customer receipt in evidence relates to this as does Tracking Number 1.

I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for January 11, 2020.

Based on the undisputed testimony of the Tenant, customer receipt and Canada Post website information, I find the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Landlord received the package January 11, 2020, in sufficient time to prepare for, and appear at, the hearing.

I also note that the Landlord submitted evidence for the hearing which supports that the Landlord received the hearing package. Further, the Landlord acknowledged receipt of the hearing package and Tenant's evidence in the Landlord's written submissions.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Tenant's documentary evidence and oral testimony. I will only refer to the evidence I find relevant in this decision.

In relation to the Landlord's submissions and evidence, I have not considered them other than as noted above. Rule 7.4 of the Rules of Procedure (the "Rules") states:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Landlord did not appear at the hearing to present his evidence and submissions, provide further details about these or answer questions in relation to these, I have not considered them, other than as noted above.

### Issue to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

### Background and Evidence

The Tenant sought \$8,748.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice").

The Tenant submitted a copy of the Notice. It is addressed to the Tenant. It appears to relate to the rental unit although the street number is not complete on the Notice. It is signed and dated June 17, 2019 by the Landlord. It has an effective date of October 31, 2019. The grounds for the Notice are that the rental unit will be demolished.

The Tenant provided the following testimony and submissions.

She had a written tenancy agreement with the previous owner of the rental unit. The Landlord purchased the rental unit in May of 2019 and became the landlord. The tenancy started December 01, 2011. The tenancy was for a fixed term of one year then became a month-to-month tenancy. Rent at the end of the tenancy was \$729.00 due on the first day of each month.

The tenancy ended October 31, 2019.

The Notice was served on her in person June 17, 2019.

On September 29, 2019, she emailed the Landlord confirming she would vacate the rental unit by October 31, 2019 as required.

On October 30, 2019, the Landlord emailed her with an offer for her to stay at the rental unit because his plans had changed. She replied that it was too late as she had basically vacated the rental unit at that point.

On November 19, 2019, she discovered a rental advertisement for the rental unit on two online rental platforms. She could tell the advertisement was for the rental unit due to three factors. First, the Landlord's photo was linked to the advertisement. Second, the Landlord confirmed in the postings that the unit was on the same avenue as the rental unit. Third, the photos posted were of the rental unit.

In late December, she was in the area of the rental unit and saw that someone was living in the rental unit. The rental unit had not been demolished.

The rental unit is in a house on a property. The house has an upper and lower suite. She attended the rental unit recently and it remains unchanged and has not been demolished.

She never agreed to the Notice being cancelled or withdrawn.

The Tenant had received the Landlord's submissions and evidence and pointed out that the Landlord acknowledged re-renting the rental unit. She also pointed out that the Landlord's timeline shows he knew two days after issuing the Notice that his plans had changed.

The Tenant submitted screen shots of the rental advertisements.

The Tenant submitted the email from the Landlord dated October 30, 2019 stating in part:

You were given a 4 month Notice on June 17, 2019...Your rent at this time is \$729.00 per month...

Unfortunately my circumstances have changed due to the significant downturn in the Real Estate market from when my offer on the home was accepted for purchase on May 14, 2019.

I will have to wait at least 6 months to a year before the Real Estate market is predicted to recover and my bank will reconsider mortgage funds to build the 2 homes that I set out to complete.

As a jester [sic] of good faith I am offering you to stay on as a tenant on a month to month basis at your present rent of \$729.00 per month.

### Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the undisputed testimony of the Tenant, Notice and Landlord's email, that the Tenant was served with the Notice which was issued pursuant to section 49(6)(a) of the *Act*. Section 49(6)(a) of the *Act* states:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit...

Section 51 of the *Act* sets out compensation due to a tenant served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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 acknowledge that the Landlord sent the Tenant an email October 30, 2019 stating that his plans had changed and stating the Tenant could stay in the rental unit. I accept the Tenant's undisputed testimony that this offer was declined because she had basically vacated the rental unit at that point. I find the Tenant's position reasonable given the Landlord reached out to the Tenant the day before the effective date of the Notice in circumstances where the Tenant had told the Landlord she would vacate October 31, 2019 as required.

Policy Guideline 11 deals with cancelling and withdrawing notices to end tenancy and states:

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

(emphasis added)

I accept the undisputed testimony of the Tenant that she never agreed to the Notice being cancelled or withdrawn.

The Landlord issued the Notice and was required to follow through with it.

I accept the undisputed testimony of the Tenant that she was in the area of the rental unit recently and it remained unchanged and had not been demolished. I am satisfied based on the undisputed testimony of the Tenant, screen shots of the rental advertisements and in part on the email from the Landlord that the Landlord had not demolished the rental unit as of May of this year.

I am satisfied the Landlord did not take steps to demolish the rental unit within a reasonable period after October 31, 2019, the effective date of the Notice, given the rental unit had not been demolished seven months later. This is a lengthy period of time. It is also more than the six-month requirement set out in section 51(2)(b) of the *Act* which indicates it is not within a reasonable period after the effective date of the Notice.

I also accept the undisputed testimony of the Tenant that she was in the area of the rental unit in late December and saw someone living in it. Based on this, and the rental advertisements, I am satisfied the Landlord re-rented the unit in December.

Given the Landlord re-rented the unit in December and had not demolished the rental unit as of May of this year, I am satisfied the Landlord failed to follow through with the stated purpose of the Notice.

I find section 51(2) of the *Act* applies. The Tenant is entitled to the equivalent of 12 times the monthly rent payable under the tenancy agreement.

It is the Landlord who has the onus to prove extenuating circumstances existed such that section 51(3) of the *Act* applies. The Landlord did not attend the hearing to present his evidence or submissions or to provide testimony about extenuating circumstances. Therefore, I am not satisfied there were extenuating circumstances or that the Landlord should be excused from paying the Tenant the compensation set out in section 51(2) of the *Act*.

I also note the following. The Landlord should not have issued the Notice until everything, including permits, was in order to proceed with the demolition. A downturn in the real estate market is a possibility that should generally be considered before issuing a notice to end tenancy under section 49 of the *Act*. A downturn in the real estate market will not generally amount to extenuating circumstances.

I am satisfied based on the undisputed testimony of the Tenant and Landlord's email that rent was \$729.00 at the end of the tenancy. Therefore, the Tenant is entitled to \$8,748.00 pursuant to section 51(2) of the Act. I issue the Tenant a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenant is entitled to \$8,748.00. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 02, 2020

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Residential Tenancy Branch