



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:41 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that the landlord was served with the tenant's application for dispute resolution package on January 31, 2020 by way of registered mail. The tenant provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence package on February 5, 2020, 5 days after mailing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

### **Background and Evidence**

This tenancy began on September 1, 2018 with monthly rent set at \$1,455.00, payable on the first of every month. This tenancy ended on November 7, 2019 after the tenant was served with a 2 Month Notice for Landlord's Use on August 28, 2019. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse". A copy was included as part of the tenant's evidence.

The tenant testified that the rental unit remains vacant, which the tenant testified was verified by the other tenant renting upstairs suite in the home. The tenant testified that he also discovered a listing online for the home. The tenant is seeking compensation in the amount of \$17,460.00 for the landlord's failure to use the home for the reason stated on the 2 Month Notice.

### **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*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 have considered the testimony and evidence before me, and I find that it was undisputed that the landlord failed to comply with section 49(3) of the Act.

Residential Policy Guideline 2A addresses the definition of occupation in contemplation of the Act:

***Vacant possession***

*Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see **Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

I accept the tenant's sworn testimony that the rental unit remains vacant. By failing to occupy the home in the context of section 51(2) of the Act, the landlord failed to comply with section 49(3) of the Act.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the Act.

*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 the evidence does not support the existence of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the respondent's noncompliance. I issue a monetary award to the tenant in the amount of \$17,460.00.

As the tenant was successful in their claim, I find that the tenant is also entitled to recover the filing fee for this application.

### **Conclusion**

I issue a \$17,560.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 19, 2020

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Residential Tenancy Branch