



# Dispute Resolution Services

Page: 1

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 March 06, 2020 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with Legal Counsel. I explained the hearing process to the parties. The Tenant and Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence provided and all oral testimony and submissions of the parties. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

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

### Background and Evidence

The Tenant sought \$17,178.72 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 27, 2019 (the “Notice”).

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The Tenant testified that rent at the end of the tenancy was \$1,431.56. The Landlord did not agree with this. The Landlord's testimony on this point was unclear. I understood the Landlord to testify that the Tenant did not pay rent for the last three months of the tenancy and that the last rent payment made was \$1,396.00. The Tenant testified that he did pay July and August rent.

The Notice was submitted as evidence. It has an effective date of September 30, 2019. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member.

The Tenant testified that he received the Notice June 27, 2019.

The parties agreed the tenancy ended September 30, 2019.

The Tenant provided the following testimony and submissions. The Landlord evicted him in bad faith. The Landlord emailed him about agreeing to a rent increase above the allowable amount in April. He did not agree to this. Three months later, the Landlord served the Notice. The Landlord did not take steps to accomplish the stated purpose of the Notice or use the rental unit for the stated purpose for six months. The Landlord simply changed his mind about moving into the rental unit. The Landlord renovated the rental unit.

The Tenant submitted that the Landlord issued the Notice for financial reasons and referred to emails in evidence to support this. The Tenant referred to emails in evidence from July and August in relation to the Landlord attending the rental unit with a contractor.

The Tenant testified that he received an email from the Landlord in September indicating the Landlord was not going to move into the rental unit and stating the Tenant could stay in the rental unit. The Tenant testified that he did not agree to the offer. The Tenant relied on the September email to support his position that the Landlord simply changed his mind about moving into the rental unit.

The Tenant referred to the Landlord's written response submitted in relation to doing repairs and upgrades to the rental unit and re-renting it in February.

The Tenant testified that he never agreed to the Landlord withdrawing or cancelling the Notice.

The Landlord testified about the reason he asked the Tenant to agree to a rent increase above the allowable amount in April.

The Landlord further testified as follows. He wanted to move into the rental unit because of the location which is close to where he works. This was his thinking when his wife passed away in June. Everyone said not to move and that he was not in his right mind. He was having a tough time. He would say he made a hasty decision in deciding to move into the rental unit. He did not know what to do with the rental unit. He decided not to do anything. He asked the Tenant to continue the tenancy.

The Landlord further testified as follows. It was his intention to have the tenancy continue when he sent the September email to the Tenant. He intended to cancel the Notice. He did not intend to extract a higher rent amount when he sought to cancel the Notice. He did not really think the Tenant expected him to move into the rental unit after the September email as there was no indication the Tenant expected him to move in. The Tenant did not suggest that the Landlord would face a penalty if he did not move in.

Legal Counsel acknowledged that the Landlord never moved into the rental unit. Legal Counsel submitted that the Notice was either cancelled or extenuating circumstances apply.

In relation to the Notice being cancelled, Legal Counsel referred to and relied on the September email.

In relation to extenuating circumstances, Legal Counsel made the following submissions. It would be unjust and unreasonable to force the Landlord to pay the 12 months compensation. The Landlord was induced to believe the Tenant was okay with the situation. The Tenant was made aware the Landlord was not moving in and the Tenant could continue the tenancy. The main question in considering extenuating circumstances is whether it would be unreasonable or unjust to award the compensation. The Landlord was induced to believe he did not have to move in any more because of the Tenant's email. The situation is analogous to the Landlord giving the Tenant a right of first refusal and the Tenant not exercising that right. The relevant period of time was two months following the death of the Landlord's wife when the Landlord was grieving.

Legal Counsel submitted that the Tenant acknowledged in the September email that the Notice was cancelled. Legal Counsel further submitted as follows. The Tenant acknowledged receiving the Landlord's notification. The Tenant thanked the Landlord

for the offer. The Tenant indicated he understood the offer. The communications are casual, but the intent was clear. The Landlord was saying I'm not following through and the Tenant was saying I understand but I'm going to carry on.

The Landlord testified that renovations in the rental unit started in December and included doing the windows, bathroom and flooring as well as upgrades and repairs.

In reply, the Tenant submitted that the Landlord changing his mind does not constitute extenuating circumstances.

The Tenant submitted a copy of a cheque from him to the Landlord dated August 01, 2019 in the amount of \$1,431.56.

The Tenant submitted the September 03, 2019 email from the Landlord stating:

I am advised that it would be better for me to remain in my current residence in [city]. My daughter advised me that I must inform you that if you would like to continue with the tenancy at [address] please do so. Please let me know.

The Tenant submitted a Notice of Rent Increase showing the rent would be increased from \$1,396.64 to \$1,431.56 starting August 01, 2019.

The Landlord provided written submissions which state in part the following. He lost his wife on June 01, 2019. Because of his sudden change in life, he really wanted to move to the rental unit. His relatives and friends advised him not to make any decision at that critical point in his life. They advised him not to move. He was confused. He consulted his real estate agent to advise whether he should put the rental unit on the market. Finally, he decided to move into the rental unit. After considerable counselling with his daughter, brother, son and other friends, he decided not to sell or rent his house and not to move into the rental unit. He sent the September 03, 2019 email to the Tenant. The repairs and upgrades to the rental unit were completed in January and he rented it out in February.

The Landlord submitted an email from the Tenant stating he had cancelled his September rent cheque.

The Landlord submitted the Tenant's reply to his September 03, 2019 email which is as follows:

Hi [Landlord], thank you very much for your offer. Unfortunately, however it is too late, and at this point I am very committed toward relocating. Again, thanks and best wishes.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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 of the *Act* sets out compensation due to tenants 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.

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

### C. WITHDRAWAL OF NOTICE TO END TENANCY

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.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

### D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

Policy Guideline 50 states at page three:

### 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

The Landlord took the position that the Notice was withdrawn or cancelled. The Landlord could not withdraw or cancel the Notice without the Tenant's consent. I do not find that the Tenant consented to the Landlord withdrawing or cancelling the Notice.

The Landlord's September 03, 2019 email does not state that he is seeking to cancel or withdraw the Notice. This could be implied by the Landlord stating that the tenancy could continue. However, the Tenant responded that it was too late, and he was committed to relocating. This was clearly an indication that the Tenant was not agreeing to continue the tenancy. There is no issue that the Tenant did in fact vacate the rental unit September 30, 2019, in accordance with the Notice.

The Tenant does not state in his email that he is agreeing to the Notice being withdrawn or cancelled. There is no agreement in the email. The Tenant explicitly disagrees with the Landlord's offer. There is no reference to agreeing to the Notice being withdrawn or cancelled or any words or phrases that could be construed as such. I do not accept that the Tenant agreed to the Notice being withdrawn or cancelled.

I note that the Tenant had no obligation to agree to the Notice being withdrawn or cancelled. It was open to the Tenant to continue with his acceptance of the Notice and to vacate. This decision did not cancel the Notice.

Further, it was not the Tenant's responsibility to tell the Landlord the relevant law or Policy Guidelines around the Notice and what would occur if the Landlord did not follow through with the stated purpose of the Notice. It was the Landlord's responsibility to understand this prior to issuing the Notice and particularly when he sought to cancel the Notice and the Tenant did not agree to cancelling the Notice. I do not accept that the Landlord was induced to believe he did not have to move into the rental unit by the Tenant. There was no such discussion between the parties. The Tenant's email says

no such thing. If the Landlord believed this, it could not have been due to anything the Tenant said in his email.

I find the Tenant did not agree to the Notice being cancelled or withdrawn. I find the Notice remained in effect.

There is no issue that the Landlord did not move into the rental unit and did not follow through with the stated purpose of the Notice. Therefore, section 51(2) of the *Act* applies.

The remaining issue is whether extenuating circumstances apply. I do not find that they do. The Landlord has the onus to prove extenuating circumstances.

I do not accept that the Landlord's wife passing away is an extenuating circumstance as that term is used in the *Act* because it occurred prior to the Landlord issuing the Notice. It was not a circumstance that stopped the Landlord from accomplishing the stated purpose of the Notice as the Landlord chose to issue the Notice after his wife passed away.

I acknowledge that on June 27, 2019, when the Notice was issued, the Landlord was still grieving the loss of his wife. However, I do not find this to be an extenuating circumstance. The Landlord acknowledged that friends and relatives told him not to make important decisions at that point in his life. Despite this, the Landlord chose to do so. Landlords are expected to fully consider the consequences of issuing notices under section 49 of the *Act*. Not doing so is not an extenuating circumstance.

Further, the Landlord stated that he spoke to friends and relatives again who advised him not to move and that he changed his mind after issuing the Notice. I find the Landlord was getting assistance and advice from relatives and friends both before issuing the Notice and after issuing the Notice. According to the Landlord, the advice was the same throughout this period. The only thing that changed was the Landlord's own mind about whether he should move or not. In my view, nothing occurred to prevent the Landlord from moving into the rental unit. The Landlord simply changed his mind about moving into the rental unit. This is not an extenuating circumstance.

I have already commented on the submission that the Tenant induced the Landlord to believe he did not have to move into the rental unit. I find this is a mischaracterization of the circumstances.

A right of first refusal applies in different circumstances, not the circumstances here. I find it has no bearing on this decision.

Given the above, I am not satisfied there were extenuating circumstances that prevented the Landlord from following through with the stated purpose of the Notice.

Given the above, I find section 51(2)(b) of the *Act* applies and the Landlord must pay the Tenant twelve times the monthly rent. I am not satisfied section 51(3) of the *Act* applies such that the Landlord is excused from this obligation.

The parties disagreed about what rent was paid at the end of the tenancy. I accept the Tenant's testimony on this point as it is supported by the documentary evidence whereas the Landlord's testimony is not. I am satisfied rent was \$1,431.56 at the end of the tenancy and award the Tenant twelve times this for a total of \$17,178.72.

### Conclusion

The Application is granted. The Tenant is entitled to \$17,178.72. 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 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 *Act*.

Dated: July 29, 2020

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Residential Tenancy Branch