



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, MNDCT**

### Introduction

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

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

All named parties attended the hearing. Both of the tenants were represented by the co-tenant, DM and for ease of reference, DM will be referred to as the "tenant" throughout this decision although there are two tenants. The landlord attended the hearing and was represented by an articulated student. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Issue

During the hearing, the landlord advised that the tenant had misspelled his surname and for this reason, the application should be dismissed in accordance with Residential Tenancy Branch Policy Guideline PG-43 [Naming Parties]. The tenant testified the error was made based solely on a typographical error. The policy guideline states:

*If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.*

I considered the landlord's submission and I conclude that dismissing the tenant's application without leave to reapply would be contrary to the principals of fairness. I determined that a typographical error made on the application does not provide

sufficient cause for me to dismiss this application outright. Dismissing with leave to reapply would result in another hearing before an arbitrator after the merits of the application have already been considered at this hearing. For these reasons, I deny the landlord's application for dismissal based on the misspelling of the name, and in accordance with section 64(3) of the *Act* and Rule 6.1 of the Residential Tenancy Branch Rules of Procedure, I amend the landlord's surname to the name shown on the cover page of this decision.

#### Issue(s) to be Decided

Should the purchaser of the tenant's former rental unit be required to compensate the tenants after a close family member didn't move in?

Can the tenant's filing fee be recovered?

#### Background and Evidence

The hearing process was explained, and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant provided the following testimony. He rented the lower unit of a single detached home with an upper and lower unit. The previous landlord sold the house and served the tenant with a two month notice to end tenancy as the purchaser or a close family member intended in good faith to occupy the rental unit. A copy of the notice to end tenancy was provided as evidence. The reason for ending the tenancy stated on the notice reads:

*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 close family member intends in good faith to occupy the rental unit.*

The notice was disputed, and the parties mediated a settlement whereby the tenancy ended by mutual agreement on June 30, 2019, the original effective date stated on the notice to end tenancy. A copy of the previous settlement agreement was provided as evidence and the file number is recorded on the cover page of this decision.

Paragraph e) of the settlement states:

*The tenants reserve their right under section 51(2) to claim against the purchaser if the purchaser does not move into the residential premises as provided in section 51(2) of the Act and this settlement shall not be considered as a release of those possible claims against the purchaser.*

The tenant testified that he was led to believe that the purchaser's mother was going to move into the lower unit of the house and for that reason, he agreed to move out. Otherwise, the tenant wanted to continue living in the house as there was another year left in the five-year lease, scheduled to end on April 30, 2020.

The tenant called a witness, NB who testified that she, as agent for the landlord, signed the residential tenancy agreement with the tenants. Although not named on the title certificate as an owner, her husband was partners with SW, the other landlord who served the tenant with the notice to end tenancy and eventually settled the eviction dispute with the tenant at the previous hearing. The witness testified there is an ongoing lawsuit involving her husband and SW at the Supreme Court level. In dispute is the tenancy agreement allegedly signed by her husband and SW which indicates her husband is a tenant rather than a partner of SW. The witness also testified that she heard the purchaser's realtor advise the tenant to 'be nice' to the new purchaser since that new purchaser may allow him to stay if he is liked by the purchaser.

The tenant testified that shortly after vacating the rental unit, he saw advertisements put on social media looking for a tenant. He received an email from a friend who still lives in the vicinity of the former house and this friend spoke to the new tenant who advised the friend that he moved in on October 2<sup>nd</sup>.

The landlord provided the following testimony. He acknowledged he advertised the vacancy for the lower unit of the house and a new tenant was found for October 1 or 2. The landlord lives in the upper unit of the house and he is not related to the tenant below.

His sister was going to move into the lower unit of the house, however marital situation changed, and she decided she was not going to relocate to B.C. from Ontario. His mother was never planning on moving into the unit. He acknowledges meeting the tenant and the tenant told him he had a '*lot of stuff needing solving*' which to him meant the tenant did not want to continue living there.

The landlord testified he was unaware there was a tenancy agreement in existence between the tenant's witness, NB and the tenants. The only tenancy agreement he was

aware of was the one he provided as evidence between SW and the husband of the witness called by the tenant. He knew from his realtor that there were people living in the lower level, however he thought they were 'subletting' from NB's husband.

The landlord argues that the mutual agreement to end the tenancy entered into between the tenant and SW prevents the tenant from seeking compensation from him as a purchaser. Counsel for the landlord submits that although the tenant tried to retain the right to seek compensation pursuant to section 51 of the *Act*, this right shouldn't survive after the tenancy ended.

Lastly, the landlord argues that because he was not a party to the arbitration hearing that resulted in the settlement agreement, he was not able to dispute the tenant's eventual claim for compensation pursuant to section 51.

### Analysis

Pursuant to section 58(0.1) of the *Act*:

In this section, "**landlord**" includes a purchaser as defined in section 49 who, under section 49 (5) (c), asks a landlord to give notice to end a tenancy of a rental unit.

If a landlord gives a notice to end tenancy under section 49 to occupy or have a close family member occupy the rental unit, the landlord or their close family member must take steps to occupy the unit after the effective date of the Notice. The consequences for not using the rental unit for the stated purpose are expressed in section 51(2) of the *Act*.

Compensation for Ending a Tenancy is explored in Residential Tenancy Branch Policy Guideline PG-50, which states:

### **Accomplishing the Purpose/Using the Rental Unit**

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

The landlord testified that the original intent was for his sister to live in the lower unit of the house. Section 49(1) of the *Act* states a "**close family member**" means, in relation to an individual, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse. I find that had the sister followed through with occupying the rental unit, the stated purpose for ending the tenancy would not have been fulfilled.

The landlord testified that the sister didn't move in, so he advertised for a new tenant in the rental unit and successfully rented it out on October 1, 2020, less than six months after taking possession of it. The tenancy with the applicant/tenant ended on June 30, 2019, the effective date on the Two Month's Notice to End Tenancy for Landlord's Use served upon him.

PG-50 describes the extenuating circumstances that may excuse a landlord from paying compensation.

#### 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 there were no extenuating circumstances preventing the landlord from accomplishing the purpose or using the rental unit. As stated earlier, even if the original purpose for the unit, (the sister occupying it) were accomplished, that purpose would still fail to meet the criteria of a close family member as defined by section 49(1).

Second, the landlord submits that the fact that the tenancy ended by mutual agreement prevents the tenant from seeking compensation from him. I find this argument lacks any meaningful grounds. The tenant entered into the settlement agreement with the

previous landlord based on his honest belief that the purchaser of the rental unit or his mother was going to move in. I accept the tenant's testimony that he was led to believe it was the purchaser's mother and not the sister who was eventually going to move in. Had he been advised it was the purchaser's sister, (not a close family member) it is plausible he would not have agreed to mutually end the tenancy. The settlement agreement clearly contemplates the tenant's right to seek compensation from the purchaser should the purchaser fail to occupy the rental unit himself or by a close family member. The settlement agreement was entered into before the Director's delegate at a dispute resolution hearing and I am satisfied the tenant's right to seek compensation from the purchaser of the rental unit pursuant to section 51(2) was both prudent and necessary, given the facts of what eventually happened in this case.

Likewise, the landlord's argument that he was not privy to the hearing that was held in June 30<sup>th</sup> lacks merit. At the time of the hearing, both the previous landlord and the tenant had no reason to question the purchaser's good faith ending the tenancy. They both understood the landlord, or a close family member was going to occupy it. There would be no reason to seek the purchaser's input regarding the terms of settlement as the purchaser was not required provide any compensation to the tenant and the purchaser's rights and obligations were never in jeopardy. The purchaser succeeded in obtaining the house without tenants on June 30, 2019, as sought.

Given the evidence before me, I find that the purchaser/landlord did not use the rental unit for the stated purpose for at least 6 months duration, beginning within a reasonable period after the tenancy ended on the effective date of the notice. The tenant has retained his right to seek compensation from the purchaser/landlord and pursuant to section 51(2), I award the tenant 12 months compensation at \$1,200.00 per month, for a total of \$14,400.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$14,500.00**.

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: July 22, 2020