



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 18, 2020 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss and to recover the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was accompanied by K.C., his granddaughter, who spoke for the Landlord. The Tenant, Landlord, and K.C. provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding package and documentary evidence were served on the Landlord by registered mail. K.C. acknowledged receipt on behalf of the Landlord. K.C. also testified the Landlord's documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties confirmed the tenancy began on January 1, 2010. However, the parties disagreed about much of the rest of the tenancy agreement. For example, the Tenant testified that he removed his belongings on April 30, 2019 and spent five days in May cleaning the rental unit; on behalf of the Landlord, K.C. testified the Tenant did not vacate the rental unit until May 21, 2019. With respect to rent, the Tenant testified rent was due in the amount of \$1,850.00 per month; the Landlord and K.C. testified rent was due in the amount of \$1,800.00 per month. The Tenant and the Landlord agreed that a security deposit in the amount of \$600.00 was returned to the Tenant.

The Tenant claimed \$22,200.00 as compensation under section 51(2) of the *Act*. The Tenant testified the tenancy ended pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2019 (the "Two Month Notice"). A copy of the Two Month Notice was submitted into evidence. The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord. The Tenant confirmed he was advised when he was given the Two Month Notice that the rental unit would be occupied by the Landlord's granddaughter. The Tenant's claim is based on his assertion that K.C. is not a close family member of the Landlord for the purpose of the Two Month Notice.

In reply, the Landlord acknowledged that K.C. moved into the rental unit to provide support and assistance as he is currently 92 years of age. K.C. testified that the Landlord had previously issued a type-written letter dated January 30, 2019 purporting to end the tenancy on May 1, 2019. A copy was submitted into evidence. In a written statement submitted into evidence, the Landlord indicated that on receipt of the letter the Tenant obtained a notice in the correct form and took it to the Landlord's house for signature.

The Landlord's written statement also cited his deteriorating health and difficulty maintaining the property as reasons for having K.C. move into the rental unit. He indicated he is legally blind and needs assistance with daily activities. The Landlord stated that he believes his granddaughter is immediate family for the purposes of the Two Month Notice because his wife and two of his four children are deceased. Of his two surviving children, one lives in Australia and while the other lives nearby is also faced with health challenges.

Further, K.C. testified that the Landlord's daughter still helps the Landlord despite her own health issues. However, K.C. assists with meal planning, grocery shopping, driving, and banking. In a type-written statement, K.C. stated the Landlord has been like a father to her when her biological father has not. She stated: "My grandfather walked me to school, he taught me how to swim, and how to ride a bike. I lived with him as a teenager, he has helped me through university, and he has supported me through all my life challenges. He is as close as it gets."

The Landlord also submitted insurance documentation in support of the close relationship with K.C.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. Policy Guideline #2A provides clarification when determining the nature of the relationship with the landlord. It states:

*"Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.*

[Reproduced as written.]

Section 51(2) of the *Act* provides for compensation for tenants who vacate a rental unit in accordance with a notice to end tenancy issued under section 49 of the *Act* when the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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.

In this case, the parties agreed that the Landlord's granddaughter, K.C., who is not a close family member under section 49 of the *Act* or Policy Guideline #2A, moved into the rental unit after the Tenant vacated. Although not specifically raised during the hearing, I find the evidence of the parties suggested the Landlord acted in good faith when the Two Month Notice was issued in that he was acting honestly, had no ulterior motives, and was not trying to avoid obligations under the *Act*. Indeed, the parties agreed the Landlord initially provided the Tenant with four months written notice when only two months was required. Further, the Tenant testified and I accept that he was advised of the Landlord's intention to have K.C. live in the rental unit at the time he received the Two Month Notice.

There is a general legal principle that places the burden of proving entitlement to compensation on the person who is claiming it. In regard to the claim for compensation based on the amount of rent due under the tenancy agreement, the burden of proving the amount of rent due rests with the Tenant. It is predicated on the amount of rent that was agreed to at the start of the tenancy subject to any rent increases. However, I find there was insufficient evidence before me to determine the amount of rent paid to the Landlord at the material time.

Further, despite the above, section 51(3) of the *Act* empowers the director to excuse a landlord from the obligation to pay compensation if there are "extenuating circumstances" that stopped the landlord from doing so. Policy Guideline #50 states:

*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.*

[Reproduced as written.]

In this case, I find there are extenuating circumstances which would make it unreasonable or unjust to require the Landlord to pay compensation to the Tenant. First, I accept that the Landlord is elderly and needs assistance. With the death of his wife and two of his four children, the options for close family members to assist in his old age are decreased. Of his two surviving children, one lives in Australia and the other moved from Australia to assist the Landlord. However, I accept the evidence of K.C. that her aunt now has her own health concerns and is less able to assist.

Second, I find that the letter dated January 30, 2019 gave the Tenant notice that the Landlord wished to use the rental unit to have family closer to him in his "aging years". I find that on receipt of the letter dated January 30, 2019 the Tenant obtained and provided the Landlord with the correct form of notice and had the Landlord sign it at his home. That the Tenant provided the correct form of notice to the Landlord for signature and did not dispute the Two Month Notice when it was received suggests a degree of opportunism although I make no finding in that regard.

Third, the Tenant testified and I find that he was told K.C. would be moving into the rental unit when the Two Month Notice was given to him. Therefore, I find the Tenant was aware that the Landlord intended, at the time the Two Month Notice was received, that K.C. would be occupying the rental unit and that the remedy available at that time was to dispute the Two Month Notice. As the Tenant did not dispute the Two Month Notice and in conjunction with my findings above, I find this failure on the part of the Tenant to dispute the Two Month Notice gives rise to an acceptance that K.C. was a close family member. Therefore, I find that in these circumstances, the Landlord is

exempt from obligations to pay the Tenant any compensation for not using the property for the stated purpose.

Considering the above, I order that the Application is dismissed without leave to reapply.

Conclusion

The 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: July 27, 2020

---

Residential Tenancy Branch