



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

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

The tenant AM attended the hearing ("tenant") and the landlords attended the hearing represented by their counsel, AE. 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.

### Issue(s) to be Decided

Have extenuating circumstances prevented the landlord from using the property for the purpose stated in the Two Month's Notice to End Tenancy for Landlord's Use?

### Preliminary Issue

At the commencement of the hearing, the tenant clarified that she is seeking 12 months' compensation at \$1,456.00 per month for a total of \$17,472.00. The landlord agreed that this is the amount the tenant should be awarded if she succeeds in her claim.

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during

testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the 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 parties agree on the following. The tenant began living in the rental unit in December of 2015. She lived there under multiple tenancy agreements. On October 8, 2019, the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use. A copy of the Notice was provided as evidence by the landlord. The Notice states the reason for ending the tenancy was that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The effective date on the notice was January 1, 2020, however the tenant emailed the landlord advising that she would be vacating the rental unit on December 1, 2019. Some items were left behind, however the parties agreed that the tenant could retrieve them during the first weeks in December. The tenant's possessions were fully removed by December 15<sup>th</sup>.

Through counsel, the landlord gave the following submissions. The landlord's mother and father were going to move in, however the landlord's 74 year old mother fell and injured her hip and legs on December 15, 2019. Due to the injury, she has been seeing a chiropractor and using a cane. No longer able to live on her own, or with the sole assistance of her husband, the landlord's mother decided to remain living with the landlord and his family. As a result, the landlord's mother did not move into the rental unit as originally planned, leaving the rental unit vacant.

On January 16, the landlord entered into a tenancy agreement with a new tenant because the original tenants had already vacated the unit. This tenant was permitted to find roommates to help pay the rent and the Facebook ad seen by the original tenant was the new tenant's attempt to find roommates.

To support his argument, the landlord provided an affidavit from his mother which corroborates the submissions of counsel. A letter from the mother's chiropractor dated May 11, 2020 was also provided, together with a ledger of visits to see her. I note from

the ledger that the mother's initial visit with the chiropractor happened on December 18, 2019 and an initial thermal laser visit happened on December 17<sup>th</sup>.

The landlord submits that the injury to the landlord's mother is an extenuating circumstance that prevented the mother from accomplishing the stated purpose for ending the tenancy pursuant to section 51(3) of the Act.

The tenant gave the following testimony. When she was served with the notice, the landlord told her his mother and father were going to move into the rental unit. The tenant already knew those parents were living with the landlord at the time the notice was served. On February 29, 2020, the tenant found a 'for rent' post on Facebook advertising the master bedroom of the rental unit. The tenant submits that the landlord did not use the property for the stated purpose of having the landlord's parents move in. Instead, they rented it out to new tenants in contravention of the Act.

The tenant points out the following flaws in the landlord's evidence. The mother's affidavit states she was going to occupy the rental unit "to be closer to [landlords] and our grandchildren who reside several blocks from the Premises". As the mother was already living with the family, it's a false statement as living several blocks away doesn't make her closer. The chiropractor's letter states the mother's "original pattern has resolved, which is wonderful". Lastly, the tenant notes that the mother's address noted on the ledger is the same as the landlord.

### Analysis

When a landlord serves a Two Month's Notice to End Tenancy for Landlord's Use and the tenant accepts the tenancy will end by vacating the rental unit, the landlord's good faith in issuing the notice is no longer at issue. The legislation provides the tenant with the right to dispute the notice immediately after it is issued.

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances.

Residential Tenancy Branch Policy Guideline PG-50 provides guidance regarding compensation for ending a tenancy.

PG-50 states at part E:

**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

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

The landlord has provided sworn evidence from his mother to corroborate his submission that his mother suffered the fall and injured her hip and legs. While that evidence is compelling, the landlord did not call his mother as a witness to testify or allow the tenant the ability to ask the mother questions regarding the statements she found misleading or inaccurate. Despite this, I accept the affidavit and the evidence that the fall happened on December 15<sup>th</sup>, rendering the mother incapable of living independently with her husband in the rental unit.

While the tenant points to the chiropractor's letter and ledger as indicating problems with evidence, I find no such anomalies. The ledger clearly shows initial examinations within days of the mother's injury and I find that evidence to be consistent with the remainder of the landlord's evidence. Further, the ledger shows the landlord or his mother has spent in excess of \$2,000.00 to care for his mother's injury which indicates to me the seriousness of it. I find the tenant has not proven to me that on a balance of

probabilities that the mother's injuries from a fall wasn't an extenuating circumstance preventing her from moving in.

Section 51(3) states:

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 find there were extenuating circumstances preventing the landlord from accomplishing the stated purpose for ending the tenancy and pursuant to section 51(3), I excuse the landlord from paying the tenant the 12 months compensation required under section 51(2). The tenant's application is dismissed without leave to reapply.

The tenant's filing fee will not be recovered as the application was not successful.

### 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: August 27, 2020

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Residential Tenancy Branch