



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed on May 5, 2020, for a monetary order, pursuant to section 51 and 67 of the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

The tenancy began on October 28, 2019. Rent in the amount of \$3,900.00 was payable on the first of each month. The tenancy ended on March 5, 2020.

The tenant testified that they were given a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on October 28, 2019, with an effective vacancy date of February 29, 2020.

The reason stated in the Notice was all 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 a close family member intends in good faith to occupy the rental unit. Filed in evidence is a copy of the Notice.

The tenant testified that the purchaser did not use the premise for the stated purpose as the premise was being renovated, and that they should have received a 4 Month Notice to End tenancy for this reason. The tenant stated as of the date of the hearing the purchaser has not moved into the premise. The tenant seeks compensation that is the equivalent of 12 months rent in the total amount of \$46,800.00. Filed in evidence are photographs which support the premise is being renovated.

The purchaser testified that they purchased the property for their own use, and they were having the premises renovated to meet their family needs. The landlord stated that they had to have the asbestos removed and they were adding an addition to accommodate their family.

The purchaser testified that the tenant did not move-out until March 5, 2020, and a stated of emergency was issued shortly thereafter, causing the delay in the renovation. The purchaser stated that the delay caused their ability to move into the premise within a reasonable amount of time; however, the planned renovation is now back on track and their family will be moving in once it is completed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

**Tenant's compensation: section 49 notice**

Section 51 of the Act, states:

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

51(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 further referred to the Black's Law Dictionary sixth edition for the legal meaning of occupy when considering this matter.

*Occupy. To take or enter upon possession of; to hold possession of; **to hold or keep for use**; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

In this case, the tenancy ended on March 5, 2020, and the tenant filed their application on May 5, 2020, I find the tenant's application did not give the purchaser a reasonable time to complete the stated purpose in the Notice.

Further, I do not accept that the tenant should have received a 4 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49(6) of the Act. The purchaser was not the landlord at the time the Notice was issued. The Notice was given to the tenant under a purchase and sale agreement because the purchaser had bought the property for their own use. A purchaser cannot issue a 4 Month Notice for Landlord's Use of Property as they were not the landlord or the property owner at the time the Notice was issued.

Furthermore, a 4 Month Notice under section 49(6) of the Act, would be to make the repairs or renovations to the rental unit, with the intent to re-rent the premises after the work was completed. That is clearly not the case before me.

The purchaser bought the property for their family and were making it suitable for their own use, which involved the removal of asbestos and adding an addition. I find the purchaser had the right to make the property suitable for their family needs. I find this meets the definition of occupy as defined in Black's Law Dictionary as they were holding the premises for their use.

While I accept that the Residential Tenancy Policy Guideline #2 requires that the purchaser to live in the premise, I find that is a very narrow interpretation of the word "occupy". The guideline cannot capture all situations which I must consider. I find it would be unreasonable and unfair that a purchaser cannot make the property suitable for their own needs prior to moving into the premise. The space was being used and held for their own needs, as it is under renovation and not simply left vacant with no intent of moving into the premise.

However, even if I take the above-mentioned guideline into consideration as the purchaser has not move into the premise as of the date of the hearing. I find there were extenuating circumstances preventing the purchaser from doing so. The premise was under renovations making it suitable for their needs, when the state of emergency was declared on March 18, 2020, and it is common knowledge that work stopped for non-essential workers throughout the province, which I note was only 13 days after the tenancy ended.

This caused a significant delay of the renovation being completed, which the purchaser could not move their family into the premise under this circumstance, which I find reasonable in my opinion. I find the purchaser would be excused from paying any compensation to the tenant even if I found a violation of the Act, which I have not.

Based on the above findings, I dismiss the tenant's application without leave to reapply. Since the tenant was not successful with their application. I decline to award the tenant the cost of the filing fee.

Conclusion

The tenant's 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: September 23, 2020

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Residential Tenancy Branch