



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on March 9, 2020, wherein the Tenants sought monetary compensation from the Landlords in the amount of \$25,790.88 pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act") as well as recovery of the filing fee.

The hearing of the Tenants' Application occurred on May 25, 2020, June 22, 2020 and September 3, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both parties were also assisted by legal counsel.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The hearing of the Tenant's Application concluded on September 3, 2020. This Decision was rendered on October 7, 2020. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?
2. Should the Tenants recover the filing fee?

### Background and Evidence

In support of their claim, the Tenant, D.S., testified as follows. He confirmed that they moved into the rental unit August 1, 2018. Monthly rent was originally \$1,700.00. A year into the tenancy the rent was increased to \$1,742.50 which was the amount the Tenants paid when the tenancy came to an end.

On November 1, 2019, the Landlord served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reasons cited on the Notice were as follows:

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

The Tenants applied to dispute the Notice on November 1, 2019 and a hearing of the Tenant's Application occurred on December 30, 2019. The Arbitrator dismissed the Tenant's Application and granted an Order of Possession. A copy of the Decision was provided in evidence before me and includes the following:

"I find that the landlords have provided sufficient evidence to support the issuance of the 2 Month Notice. The landlords have provided the contract of purchase and sale of the rental property and written request from the purchaser that a Notice to End Tenancy be issued. I accept the landlord's position that all of the subjects for the sale of the property have been removed.

I further accept that the landlords have been provided with a written request from the purchaser that they issue the 2 Month Notice as the purchasers intend to occupy the rental unit. I find that the written evidence submitted in conjunction with the testimonies of the landlords demonstrates the landlord's good faith intention. The landlord provided documentary evidence that a deposit has already been paid for this property purchase. I find the purchaser's explanation that they intend to occupy the rental unit as it is closer to work and provides sufficient space for their family to be reasonable, cogent and in accordance with the documentary evidence. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed."

In furtherance of the Decision, the Landlords were granted an Order of Possession effective January 31, 2020. The Tenant confirmed that they moved from the rental unit in accordance with the Order of Possession.

The Tenants submit that the purchaser, M.K. did not in fact purchase the home and argue that there never was any real intention for M.K. to purchase the home for the following reasons.

Although M.K. was purportedly going to pay \$1,000,000.00 for the home, the contract of purchase and sale indicated that M.K. had not viewed the upper unit of the rental property.

M.K. also waived all conditions which would provide the purchaser with any protection including:

- buyer financing;  
state of title;
- fire property insurance;
- property disclosure; and,
- an inspection.

Counsel noted that apparently this sale did not complete because the buyer could not get financing, yet the buyer specifically waived the buyer financing condition on the contract.

Counsel further noted that the Landlords did not commence legal proceedings to compel specific performance or seek damages and in fact returned the \$10,000.00 deposit to the buyer.

Counsel submitted that M.K. was the Landlord, P.J.'s business associate and as such this was not an arms length transaction. In support the Tenants provided a newspaper article from January 13, 2020, showing that M.K. and the Landlord were in snow removal business together. The Tenant confirmed that he was not aware of M.K. and the Landlord's business relationship at the time of the December 30, 2019 hearing.

On February 20, 2020, and shortly after the Tenants vacated the rental unit, the property was put back on the market. The Tenant testified that the Landlord's realtor, P.D., took the sign down on November 1, 2019 and the sign was put back on the property February 20, 2020.

The second buyer, A.A.L., made an offer to purchase the property for \$1,095,000.00 (this was confirmed by the contract of purchase and sale dated March 2, 2020 which was provided in evidence).

Counsel submitted that the property was sold to A.A.L. for nearly \$100,000.00 more such that the Landlord benefitted significantly from this sale.

The Tenant confirmed that the property was on the market for sale for over six months prior to receiving the Notice. The Tenant stated that during that time period there were three other offers, but the only one that was accepted was the one from M.K. Following the collapse of the first sale, the house sold the second time only a few weeks after it was put on the market, 11 days.

In cross examination the Tenant confirmed he was aware the Landlords wanted to sell the property and that there was a sign on the property for six months. The Tenant further confirmed that he was aware the property was sold, and the new owners wanted vacant possession.

The Tenant also confirmed that the property is now occupied by the second purchaser.

The Tenant stated that he believed the home sold for a higher price because it was vacant. He conceded there was nothing wrong with the second sale that went through on the property and stated that he assumed it was a legitimate sale.

The Tenant also stated that the first buyer had no intention of moving to the rental property. He noted that his business requires him to have excavators which he can't have on the property. He also noted the rental property is a small two-bedroom home and M.K. has two children and a wife. The Tenant also stated that the first purchaser did not like the downstairs tenant.

In response to the Tenant's claims, the Landlord, P.J. testified that he decided to sell the rental property in the Spring of 2019. He testified that he had it listed for \$1.249 million dollars with his long time realtor, P.D. He confirmed that they received two offers on the property, but they were "low ball offers".

The Landlord stated that the contract with P.D. was on its last week and P.D. wanted him to sign another listing. He decided not to and then spoke to all of his friends and associates to see if any of them were interested. He stated that in the same week, he

found his own buyer, M.K., and therefore didn't have to pay commission. They wrote up a contract of purchase and sale and M.K. paid a \$10,000.00 deposit which the Landlord deposited into his account.

The Landlord stated that the first sale fell through on February 19, 2020; on that date M.K. sent an email to the Landlord confirming that he could not get financing. M.K. asked to have half the deposit back and the Landlord refused. He confirmed that prior to this he and M.K. were friends and had business dealings. He stated that after the collapse of the sale, he and M.K. got into a fight about this as the Landlord was upset that he had ended the tenancy and therefore wasn't even getting rental income from it such that he was losing money every month. The Landlord confirmed that he was receiving \$1,742 in rent for upstairs and \$2,200.00 for the downstairs unit as well as the barns. As his mortgage was \$4,200.00, plus property taxes, he was losing money every month the unit stayed vacant.

The Landlord stated that as soon as he received the email from M.K., either that evening, or the day after, he called P.D. and asked him to relist it. P.D. stated he could do so but at a lower listing price.

In terms of the second sale, the Landlord testified as follows. He stated that P.D. listed the property for \$1,098,000.00 on February 20, 2020 and it sold 12 days later for \$1,095,000.00. The possession date for the second sale was April 29, 2020. The second purchaser wanted to keep the downstairs tenant who rented the basement and the horse barn as she was paying \$2,200.00 per month. The Landlord confirmed that there were no issues with the completion of the second sale. He further stated that to his knowledge the purchasers moved into the property after the sale completed.

In cross examination, counsel for the Tenants pointed out that after M.K. had purchased the property on October 31, 2019, it was again advertised for sale in November of 2019. The Landlord confirmed that after he and M.K. signed the contract, P.D. informed him that a third party, who saw the property in the summer, indicated they were willing to pay \$50,000.00 more than M.K. was going to pay. The Landlord and M.K. had a conversation about selling it for the additional \$50,000.00. M.K. agreed and the realtor called the Tenant about showing the property again and the Tenant refused and said, "no you sold it to M.K." The Landlord stated that he understood why the Tenant was suspicious, but that was what happened. He also confirmed they did not take any further steps in this regard.

The Landlord confirmed that although he signed a contract with P.D. which might have entitled the realtor to a commission for the sale with M.K., P.D. did not expect compensation. Counsel asked the Landlord why the realtor would walk away from a potential \$29,500.00 commission and the Landlord stated that they are friends and the realtor knew that if he didn't get this commission, he would get the next one as they do a lot of business together.

In terms of why the Landlord wanted to sell that property, the Landlord stated that he had "ownership issues" and one of his partners wanted to get out.

Counsel asked the Landlord why they waived all the conditions of sale, including "subject to financing" when that was the reason why the sale collapsed. The Landlord stated that M.K. assured him that he had his financing in order and that he had been pre-approved. He also stated that M.K. was fully aware of the property and knew how much the Landlord had put into this property and didn't need to see it to be willing to buy it.

The Landlord confirmed that he didn't know what happened between Halloween 2019 when he and M.K. signed the contract and February 2020 when M.K. said he couldn't get financing, but that he was "furious". He further stated that it was his understanding that M.K. was preapproved in October 2019 and they did not speak after this as the Landlord was so angry.

The Landlord also stated that he lost "multiple months" of rental income as he had already evicted his Tenants and he had to pay the hydro bills and the municipal utility bills. As well, although he retained the \$10,000.00 deposit, the collapsed deal was time consuming. He also noted that he made promises to his partners and the collapsed deal looked bad on him.

The Landlord confirmed that they did not paint or do any improvements or renovations after the Tenants moved out although the property was empty and clean for the second sale. The Landlord denied that the condition of the rental unit when tenanted was unappealing. He stated that it was very appealing as it was furnished.

The Landlord also called his realtor, P.D., as a witness. P.D. testified that he and the Landlord have been friends for ten years and have done many real estate deals together. P.D. confirmed that he sold the Landlord's house in February of 2020 for \$1,095,000.00 after it was listed for 12 days. P.D. confirmed that they did not have any other offers on the property in those 12 days.

P.D. stated that he first listed the property in the spring of 2019 following which they had two, possibly three “low ball” offers. He stated that those two offers were under a million, likely \$950,000.00. He could not confirm the dates of the offers.

P.D. confirmed that he was aware the Landlord sold the property after his initial listing contract ended, but also knew that deal did not go through. P.D. stated that he felt “burned out” trying to sell the property and he was willing to end the contract. He further stated that he was aware the Landlord was trying to sell the property privately but when he had no luck the Landlord called P.D. and asked him to list it again.

P.D. confirmed that the upper unit was vacant at the time it was sold in the spring of 2020. The buyers wanted to keep the lower tenant because of the rental income received for the basement unit as well as the barns.

In cross examination, P.D. confirmed that the listing contract he signed with the Landlord in 2019 was the same as the one they signed in 2020. P.D. stated that he was only entitled to \$13,000.00 in a commission as he had to share the commission with another agent. He also stated that he has received over \$250,000.00 in commissions in dealings with the Landlord over the years such that losing out on the \$13,000.00 wasn't worth causing a fight. P.D. also stated that with a client like the Landlord he doesn't always charge the full commission.

In terms of why the property sold the second time after only 12 days, when it was first on the market for months without interest, P.D. stated that the property was overpriced initially. He further stated that there was no competition in the market at the time of the second sale, it came down to timing. P.D. also claimed the Landlord took a loss on the sale, as he bought the property for \$1,055,000.00, then built a suite and had to pay realtor commissions on the ultimate sale price of \$1,095,000.00.

P.D. also stated that the property showed better with the Tenant's furniture and having it vacant did not improve the chance of sale.

In terms of the first sale, P.D. stated that he believed that the sale between M.K. and the Landlord was real and that from what he knew a deposit was collected. He further stated that “lots of people buy property sight unseen”. He also stated that from his experience as a real estate agent the Landlord genuinely wished to sell the property.

The original purchaser, M.K., also testified. He stated that he put in an offer of \$1,000,000 on October 31, 2019. The completion date was March 1, 2020 to accommodate giving the Tenants notice to move out of the rental unit. He confirmed that he paid a down-payment of \$10,000.00. He further confirmed that the deal did not complete as he could not get financing from the two banks with whom he deals. He testified that asked for half his deposit back and the Landlord said no.

In cross examination, M.K. stated that he wanted to purchase the property to live in it. He confirmed that he has business both in the city in which he lives as well as the city in which the rental home is located. He confirmed that when he put the offer in on the property, he was much busier, but his business has slowed during COVID-19 and as such he no longer needs to live in the community in which the rental unit is located.

In terms of the contract of purchase and sale, M.K. stated that he waived the buyer financing subject to because he was confident that he would get financing. He stated that he called the bank and they said it was okay. He stated that after his taxes were filed in early 2020, the bank said he was not able to get financing due to his income/debt ratio. He stated that he had "more write offs" that year and as a result his income was lower, and he could not get the financing. M.K. confirmed he was aware he could have made the contract subject to financing and gotten his deposit back, but he was confident he would get financing.

M.K. also confirmed that his bank did not indicate there was a problem with him waiving a property condition inspection. M.K. testified that he did not feel he needed to inspect the home as he had originally seen the house two years prior when the Landlord purchased it. He also stated that he knew the downstairs had been renovated and knew how much time and money the Landlord put into improvements.

M.K. stated that he was not worried about the condition of the upstairs as in the unlikely event it needed to be renovated, he would have done it. He also stated that the property was appealing to him as it was big, the downstairs was renovated, and there was lot of parking because it had a nice big driveway.

M.K. confirmed that he is friends with the Landlord and has had business dealings with him. He confirmed that he knew the Landlord wanted to buy another property. He denied knowing that the Landlord had trouble selling it at the advertised price point.



In terms of his attempts to obtain financing, M.K. stated that he emailed the bank and requested the mortgage. He then spoke to another bank on the phone. He confirmed he did not approach any other banks or any other financing.

M.K. stated that he intended to buy the property as he wanted to buy the house. He denied that he was making a deal with the Landlord just to get the Tenant out of the house.

M.K. confirmed that when he was not able to obtain financing in mid February, he asked the Landlord for half the deposit back. He confirmed the Landlord retained the deposit and confirmed that he has not received any financial compensation from the Landlord in recognition of the collapsed deal. M.K. stated that the Landlord was frustrated with him as he felt that M.K. had wasted his time and “screwed him over”.

The Landlord also called B.C. as a witness. She confirmed that she lives in the basement suite and has lived there since September 15, 2018. She also confirmed that when the house sold, she stayed with the house. She stated that the new owners wanted her to stay, likely because they like the rent that she pays which includes \$2,200.00 for her basement suite and use of the fields and space for horses.

B.C. stated that she had problems with the upstairs Tenants, and to this end provided testimony which I find is not relevant to the issues before me. B.C. confirmed she gets along with the new owner who lives in the upper unit of the home.

B.C. stated that when the property was first sold to M.K. she was informed that the sale was private, and she was able to stay. She confirmed that when it was sold the second time, she was again informed by the Landlord that she could stay. B.C. stated that the new owners moved in May 1, 2020.

### Analysis

The Tenants seek monetary compensation in the amount of \$25,790.88 under section 51(2) of the *Act*. Under section 51(3), the Director may excuse the Landlord or purchaser if “extenuating circumstances” exist. For greater clarity I reproduce those sections in their entirety:

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.

(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.

Compensation pursuant to section 51 arises when a Tenant receives a notice to end tenancy pursuant to section 49 of the *Act*. Counsel for the Tenants submitted that under section 49(5), the legislation contemplated a "specific sale" and that *all* conditions of sale must be completed. The fact that the Landlord wants to sell *generally* has no bearing, as the legislators specifically referenced a specific sale in the legislation. Section 49(5) reads as follows:

49(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into *an* agreement in good faith to sell the rental unit,

(b) all the conditions on which *the* sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I am satisfied, based on the evidence before me that the Landlord issued the Notice pursuant to the specific sale with M.K., not because he wanted to sell the property more generally. I am also satisfied the original sale with M.K. was genuine. I find that at the time the 2 Month Notice was issued, the Landlord had entered into a contract of purchase and sale with M.K. Further, as the offer to purchase was unconditional, and there were no “subject to’s”, all conditions of sale were in fact satisfied at the time the notice was issued. Further, the evidence confirms that M.K. had requested in writing that the Landlord give notice to the Tenants as M.K. intended to reside in the property.

While the Landlord/seller, buyer and realtor were friends and had prior business dealings, I find this insufficient to support a finding that the sale was a ruse, as was suggested by counsel for the Tenants.

Private real estate sales between acquaintances and business associates occur regularly. Often it is the familiarity with the seller and the home which entices a buyer to purchase a particular property. Pursuing such a private sale can also benefit the parties in terms of reduced real estate commission.

In this case, I accept M.K.’s testimony that he had viewed the rental home two years prior when the Landlord purchased it. I also accept his testimony that he was aware of the renovations to the basement and was therefore prepared to proceed with the sale without a formal inspection. He confirmed that he has the skills to further renovate the home had work been required in the upper unit. While a full property inspection would have shown a higher degree of due diligence, I am not satisfied that M.K.’s waiver of this condition invalidates the sale.

Further, I accept the realtor, P.D.’s testimony that while he might have insisted on being paid the commission for the sale between the Landlord and M.K., he did not do so as he has received significantly more in prior commissions and anticipates further real estate deals with the Landlord. I further accept his testimony that reducing the commission for friends and business associates is a common practice.

Counsel submitted that the fact M.K. did not request financing until February 2020 is suspect when the original contract was from October 30, 2019. I do not agree.

M.K. testified that he was preapproved at the time he entered into the contract of purchase and sale with the Landlord in October of 2019. Following this, he completed his 2019 taxes which resulted in reduced earnings due to higher tax deductions. The

result of this was that he no longer qualified for a mortgage due to his income and debt ratio. I accept his testimony in this regard.

Counsel for the Tenants submits that a negative inference should be drawn due to the fact M.K. only sought financing in February of 2020. The Tenants suggest he waited to obtain financing until after the Tenants had vacated the rental unit as the property was more appealing when vacant. While it may have been preferable for M.K. to obtain financing prior to February 2020, I accept his testimony that he was confident he would obtain financing based on his discussions with his bank in the fall of 2019. I also accept the Landlord and P.D.'s testimony that the rental unit showed better when it was furnished rather than empty.

In terms of the Landlord's attempt to relist the property in November 2019, I accept his testimony that he was informed by P.D. that a prospective buyer was willing to pay \$50,000.00 more for the property. At this time, he spoke to M.K. and they discussed selling the property for more. There is no evidence before me that the Landlord took any further steps in this respect.

While the Tenants allege the Landlord returned the \$10,000.00 deposit to M.K. when M.K. was unable to obtain financing, I find they have submitted insufficient evidence to support such a finding.

Conversely, I have the sworn testimony of the Landlord that he received the \$10,000.00 deposit, put it into his bank account and refused to return it when the sale collapsed. I also have the sworn testimony of M.K. that he requested return of half the deposit and this request was denied. Both the Landlord and M.K. testified that the Landlord's refusal to return the deposit created conflict between them. The Landlord stated that for a period of time following this, they did not speak to one another. On balance I find the Landlord retained the \$10,000.00 deposit on the first sale.

The Tenants argue that as the original sale collapsed, they are entitled to compensation pursuant to section 51(2). I do not agree.

The evidence confirms that when the first sale collapsed the Landlord immediately relisted the property. He did not rent it at a higher price or use it for any other purpose. Rather, he continued to market the property. The evidence further confirms that the purchaser moved into the rental unit on May 1, 2020. The purchasers also did not rent the unit to others at a higher price, nor did they use the property for any other purpose. The stated purpose on the Notice was that the property had sold, and the owner wanted

vacant possession as they intended to reside in the property. While M.K. was the purchaser at the time the Notice was issued, the fact is that within six months of the effective date of the Notice, the property title changed hands and the purchaser moved into the rental unit.

For these reasons I find the Tenants are not entitled to compensation pursuant to section 51(2) as I find steps were taken by the Landlord to accomplish the stated purpose for ending the tenancy.

As I have found the Tenants' application fails on the basis of section 51(2)(a), it is not necessary that I consider section 51(3).

As the Tenants have been unsuccessful in their application, they are not entitled to recover the filing fee.

### Conclusion

The Tenants' Application for monetary compensation from the Landlord is dismissed.

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: October 7, 2020

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Residential Tenancy Branch