



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under section 67 of the *Residential Tenancy Act*. The tenant applied for compensation in the amount of 12 months rent pursuant to section 51 of the *Residential Tenancy Act* and for the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent (daughter) also attended the hearing to assist the landlord with the language.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Is the tenant entitled to compensation and to the return of the filing fee?

### **Background and Evidence**

The tenancy started on October 01, 2015. The monthly rent was \$2,130.00 due on the first of each month. On February 24, 2020, the landlord served the tenant with a two-month notice to end tenancy for landlord's use of property. The tenant confirmed that the reason for the notice was that the landlord or his family member intended to move into the rental unit. The effective date of the notice was April 30, 2020.

The tenant moved out on April 15, 2020. The tenant agreed that she received compensation pursuant to such a notice and was provided with the equivalent of one month's rent.

The tenant stated that she drove by the rental unit several times to pick up mail and noticed that construction work was on going. The tenant filed photographs that indicate that some work was being carried out until the landlord moved in on August 17, 2020.

The tenant testified about the condition of the house and stated that it was 40 years old and had never been updated. The tenant stated that her requests for renovation were denied and at the time she moved out, the house needed repairs and updating.

The tenant also testified that a move out inspection was carried out on April 28, 2020 and based on the discrepancies she allowed the landlord to retain \$800.00 of her deposit toward cleaning and disposal of her unwanted items.

The landlord stated that prior to moving into the rental unit, he rented a home that he was part owner of. That home was sold in June 2020, and he was required to move out by mid August 2020.

The landlord stated that he started cleaning and repairing the rental unit at the end of April, in preparation for him to move in with his family. He had to replace the flooring which was at least the age of the home (40 years) and paint the inside of the home after the tenancy of five years. This work was complete in June 2020. The landlord also stated that in July 2020 he got the roof replaced and the outside of the home painted.

The landlord testified that he wished to have the above-mentioned work done before moving in and this took longer than expected due to the Pandemic. The landlord stated that he had to get each job done on its own due to the restrictions around physical distancing and he had difficulty finding construction tradesmen to take on the work during the Pandemic. The landlord testified that he moved into the rental unit on August 17, 2020 and continues to reside there with his family.

The tenant made this application on July 10, 2020 for compensation in the amount of 12 months rent plus for the recovery of the filing fee.

### **Analysis**

Section 51 of the *Residential Tenancy Act* addresses compensation pursuant to a section 49 notice. Section 51(2) states as follows:

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

(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.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit.

Based on the testimony of both parties, I find that the house was 40 years old and in need of updating as it had not had any renovations for 40 years. This was confirmed by the tenant. The landlord testified that he wanted to clean, paint and replace flooring prior to moving in. The tenant agreed that the home needed work and I accept the landlord's testimony that he was unable to get the work done in a timely manner due to restrictions related to the Pandemic and that it took 3.5 months to complete.

I find that the landlord intended to move into the rental property when he served the tenant with the s.49 notice. There is no dispute that the landlord did move into the rental unit in mid August 2020 and continues to reside in the rental unit. The landlord's testimony was corroborated by his agent (daughter) who also resides in the rental unit.

Given the circumstances and restrictions related to the Pandemic, I find that the passage of time prior to the date the landlord moved in was outside the control of the landlord and was not unreasonable.

I find that the landlord's testimony was credible, and he has proven that when he served the tenant with a notice to end tenancy, he intended to move into the rental and continues to use the unit for the purpose stated on the notice to end tenancy. I also accept the landlord's testimony that he needed to remedy the discrepancies in the condition of the rental unit at the end of tenancy and update the 40-year-old flooring.

Section 51.3(2) states that the landlord may be excused from paying the tenant the amount required under subsection (1) if, extenuating circumstances prevented the landlord from complying with section 51.2 (2).

Based on the testimony of both parties, I find that extenuating circumstances prevented the landlord from complying with Section 51.2(2), which resulted in a delay before the landlord could move into the rental unit.

Accordingly, I find that the tenant is not entitled to compensation in the amount of twelve month's rent. Since the tenant has not proven her case, she must also bear the cost of filing this application.

**Conclusion:**

The tenant's application is dismissed in its entirety.

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: November 02, 2020

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Residential Tenancy Branch