



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FFT

### Introduction

The tenant applies for a monetary award for the equivalent of twelve months' rent, as provided for in s. 51(2) of the *Residential Tenancy Act* (the "RTA").

Section 49(5) of the *RTA* permits a landlord to end a tenancy on two months' notice where the landlord has agreed to an unconditional sale of the property and the purchaser, being either an individual or a "family corporation" gives the landlord notice of an intention to occupy the rental unit.

Section 51(2) provides that if either: (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.

The applicant tenant states in her application that at the time she made the application the home was "vacant and untouched."

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the provisions of s. 51(2) been met?

### Background and Evidence

The rental unit is a two storey, five bedroom house. There was a written tenancy agreement. The tenancy started in December 2015. The monthly rent was \$3000.00, due on the first of each month.

The tenant received a two month Notice from her landlord at the end of February 2020, to end her tenancy April 30. The Notice was given pursuant to s. 49(5).

Accompanying the Notice was document signed by the respondent RO and another person, OB, entitled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession."

Within that document it is stated;

The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined by the Residential Tenancy Act), voting shareholders of the Buyer(s) intend in good faith to occupy the Property.

The tenant did not dispute the Notice and vacated the rental unit by the end of April. All security deposit issues were resolved.

The tenant LC testifies that she did not move very far away and had friends still living in the area. As a result, she had opportunities to pass by the rental unit on occasion. She observed that the yard was overgrown in May, July and August too. She says she could see inside the home and did not observe any furniture, nor were any cars parked at the home and there was no construction being done.

MS, who is LC's husband and who had also lived at the rental unit, testifies that he was concerned about a "four month reno." ( It was not clear what he meant by that) He says he was in the area quite often after moving out at the end of April. He didn't see any vehicles at the property, the property was overgrown and there was no trash out for pickup on trash day. On a date he did not specify, he says he saw some work in the nature of jackhammering on the driveway. He says the grass was "three feet high." He says the home has a large bay window in the dining and living areas. He did not observe any furniture but for a small folding chair/lawn chair in the living room.

NA testified for the respondent. He is her son. He says his mom and dad intended to move in after the closing of the sale on April 30 but the current CoVid-19 epidemic slowed the work of the bank and lawyer, ultimately delaying the closing until May 31.

NA testifies that he is living in the home and produces photos of a bed and desk he uses there. He says he is an overseas student but that because of the current pandemic restricting him to Canada, he is staying in the home and studying. He denies the lawn was overgrown in May, June or July but confesses that he does not mow the lawn very often. He says he drives a car (a van) and parks it in the carport on the property. He says that one cannot see much of the interior of the home through the front window. In June he had an air conditioner system installed and he produces a photograph of it.

In reply the tenant notes that had she been informed that closing had been delayed from April 30 to May 31, she would have stayed the extra month.

### Analysis

At the time this application was made, August 12, 2020, the six month time period referred to in s. 51(2) had not yet passed and may not have passed by the time of this hearing.

The burden of proof that the home has not been occupied by the purchaser(s) or a close family member within a reasonable time after the effective date of the two month Notice is initially on the one who alleges it. That is the tenant in this case. All three people who testified gave their evidence in a convincing manner and consonant with the very limited documentary evidence. I have no basis to prefer the tenant and MS's testimony over that of NA.

In result, the tenant has not proved on a balance of probabilities that the home is unoccupied or that it was not occupied within a reasonable time after the effective date of the Notice

During the hearing it was noted that the utility bills submitted by the respondent were in the name of a limited liability corporation. NA stated that the corporation is the registered owner of the property and that it is not a family corporation within the meaning of the *RTA*. Its shareholders are the respondent RO and her "investor friend."

The possible import of these facts, that the respondent RO might not have been the “buyer”, the purchaser of the home, was not raised in the tenant’s application and so will not be considered in this dispute and decision.

### Conclusion

The tenant has failed to prove the essential grounds to establish entitlement to recover an award under s. 51(2) of the *RTA* and so her application 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: December 01, 2020

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Residential Tenancy Branch