



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent, who is her husband, had permission to speak on her behalf at this hearing. The tenant confirmed that her agent had permission to speak on her behalf at this hearing. This hearing lasted approximately 52 minutes.

I explained the hearing process to both parties at the outset of the hearing. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 25, 2019 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 31, 2017 and ended on December 31, 2019. Monthly rent of \$1,537.50 was payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid by the tenant and the landlord returned both deposits to the tenant. A written tenancy agreement was signed by both parties.

Both parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice. The tenant received one month of free rent compensation, pursuant to the notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice was December 31, 2019. The reason indicated on the 2 Month Notice was:

- *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 tenant seeks compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of \$1,537.50, totaling \$18,450.00. The tenant claims that because the landlord did not use the rental unit for the purpose on the 2 Month Notice, she is entitled to compensation. The landlord disputes the tenant's application.

The tenant testified regarding the following facts. On October 3, 2019, the tenant gave the landlord a repair order and 22 days later, the landlord served the tenant with the 2 Month Notice. The landlord was supposed to move into the rental unit and did not do so. The landlord re-rented the unit to new people. On page 39 of the landlord's

evidence, it stated that the landlord had to change her insurance back to rental insurance because it was her plan to move back into the rental unit due to marital issues, but the landlord changed her mind.

The landlord testified regarding the following facts. Her marriage to her husband was “on the rocks,” and it was her plan to move out of his house into her own house, the rental unit on January 1, 2020. The plan was for the couple to get separated. She did not have any bad intentions towards the tenant, and she wanted to help her any way she could.

The landlord’s agent stated the following facts. On January 13, 2020, the landlord’s agent and the tenant’s agent completed a move-out condition inspection report and the tenant’s agent said the place was “unsafe” because there were rat feces. The tenant left the rental unit in a “horrible, disgusting, trashed, mess” because she knew there was no move-in condition inspection report done, so the landlord could not prove anything. There were human feces in the toilet that was not flushed. The rental unit had to be cleaned and repaired before the landlord could move in. The landlord had to rip up the carpets and replace the flooring. The landlord and her agent did a lot of the cleaning and repairs themselves, as it was hard to get contractors when the covid-19 pandemic occurred. The province went into lockdown and a state of emergency was declared on March 13, 2020.

The landlord’s agent stated the following facts. In April or May 2020, the rental unit was in a better condition, but it was still the covid-19 pandemic when lots of people were dying, so the landlord and her family had a discussion to stay together at the landlord’s agent’s house, not the rental unit. While the landlord and her agent were cleaning the rental unit, people that they knew asked if the place was for rent, as the landlord did not advertise the place for rent. The landlord re-rented the unit on September 1, 2020 until present because the landlord could not leave the rental unit vacant for insurance reasons. The landlord did repairs and cleaning at the rental unit, totalling \$11,095.34. The landlord also returned the tenant’s deposits totalling \$1,500.00. The landlord provided photographs of the condition of the rental unit when the tenant vacated.

### Analysis

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) 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.*

*(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 find that the tenant vacated the rental unit on December 31, 2019, pursuant to the 2 Month Notice. It is undisputed that the landlord or a close family member did not move into the rental unit after the tenant vacated and the unit remained empty until it was re-rented to new tenants as of September 1, 2020. Accordingly, I find that neither the landlord, nor a close family member of the landlord, moved into the rental unit after the tenant vacated on December 31, 2019, as required by the 2 Month Notice.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

#### ***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.*

I find that the landlord showed extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice. I accept the affirmed testimony of the landlord that she intended to move into the rental unit on her own, due to marital problems with her husband.

I find that the landlord could not have known at the time she took possession of the rental unit, issued the 2 Month Notice to the tenant, or when the tenant vacated on December 31, 2019, that the covid-19 pandemic would occur.

I accept the affirmed testimony of the landlord's agent that it took longer to clean and repair the rental unit because it was difficult to find contractors to do so, during the covid-19 pandemic. I find that the landlord would have been unable to move into the rental unit until it was properly cleaned and repaired. I accept the landlord's photographic documentary evidence showing the dirty condition of the rental unit when the tenant vacated. The tenant did not dispute this evidence during the hearing. I accept the affirmed testimony of the landlord's agent that the rental unit required a lot of cleaning and repairs to be done, totalling \$11,095.34.

I accept the landlord's agent's testimony that when the covid-19 pandemic occurred, the landlord's family chose to stay together, noting the state of emergency and the death occurring around them. I do not find this simply to be that the landlord "changed her mind" but rather that the pandemic forced the landlord to consider new circumstances. I accept the landlord's agent's evidence that the landlord did not advertise the unit for re-rental or seek out new tenants, but was instead approached by people she knew, to rent the unit. In any event, this re-rental occurred in September 2020, after the six-month period, under section 51(2)(b) of the *Act*.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$1,537.50, totalling \$18,450.00, from the landlord. Therefore, the tenant's application is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire 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: January 08, 2021

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Residential Tenancy Branch