



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNETC, FFT**

### Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was primarily represented by their family member.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in September 2018. Monthly rent was originally \$675.00 and later changed to \$645.00 payable on the

first of each month with the tenant responsible for paying their own utilities. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated February 6, 2019 with an effective date of April 30, 2019 (the "2 Month Notice"). The tenancy ended in accordance with the 2 Month Notice on March 26, 2019. The reason provided on the 2 Month Notice for the tenancy to end is that:

*All of the conditions for 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.*

A corporate entity is listed as the purchaser of the property. The corporate entity identified in the 2 Month Notice as the purchaser was a respondent in an earlier application filed by the tenant under the file number on the first page of this decision.

In the earlier decision the agents for the corporate entity listed on the 2 Month Notice gave evidence that they do not know the landlord named in the present application and did not instruct them to issue the 2 Month Notice. The arbitrator for the earlier hearing found insufficient evidence that the corporate entity had instructed the landlord to issue the 2 Month Notice and dismissed the tenant's claim as against them without leave to reapply.

The landlord testified that their father was the previous owner of the rental property until it was sold in November 2018 to another company not named in the present application or the 2 Month Notice. The tenant testified that the rental unit was rented to their father by the new owner of the property and that with the consent of the owners subleased the property to the tenant.

The landlord said that they were informed by their realtor that the owner intended to sell the property and desired vacant possession. The landlord testified that they issued the 2 Month Notice but said they were unaware of the identity of the new purchasers. The landlord said that they are unaware of the corporate entity listed in their 2 Month Notice as the purchaser of the property and could not recall why they entered the information on their notice. The landlord testified that they were never given written instructions to issue a 2 Month Notice by anyone.

Both parties testified that they are unaware of who, if anyone, took possession of the rental unit, who the subsequent owner of the property is or what use was made of the rental unit after the tenancy ended.

### Analysis

I accept the undisputed evidence of the parties that a landlord-tenant relationship existed between the parties wherein the tenant rented living accommodations from the landlord. While the landlord was not the registered owner of the rental property, based on their testimony I accept that they were entitled to possession of the rental unit and exercised rights of a landlord under the Act and tenancy agreement in relation to that property.

I find that there was a valid and enforceable tenancy agreement between the parties as contemplated in the *Act*. I find that the respondent meets the definition of a landlord as set out section 1 of the *Act* and further elaborated in Residential Tenancy Policy Guideline 19.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* provides the circumstances when a tenant who has received a notice to end tenancy under section 49 [landlord's use of property] may be entitled to compensation. The relevant portions of the section states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 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,

The parties agree that the landlord issued a 2 Month Notice to End Tenancy pursuant to section 49(5) of the Act. The landlord testified that they were not the owners of the property, had not entered into an agreement to sell the property, were not given a request in writing to issue a notice to end tenancy and do not know the entity listed on the notice as the purchaser. The landlord provided on their notice as the purchaser, a corporate entity whom they now testified they have no knowledge of and that they were not given any written request to issue the notice. When questioned as to why they listed a corporate entity they have no knowledge of or interaction with, the landlord was unable to provide a cogent response. Based on the testimony of the landlord it is evident that there was no basis for a 2 Month Notice to be issued.

Both parties stated that they are unaware of who has taken possession of the rental unit and if a purchaser or a close family member of the purchaser has occupied the rental unit.

Based on the evidence of the parties I find that the purpose stated on the 2 Month Notice was not carried out. I find that the corporate entity listed on the notice as the purchaser did not give a written request for the notice to be issued, did not take possession of the rental property in an agreement of purchase and sale and no one with voting shares in the company or their close family member occupied the rental unit.

I find that the purchaser listed on the notice did not use the rental unit for the purposes stated on the 2 Month Notice. Consequently, I find that the tenant is entitled to a monetary award of \$7,740.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the tenant was successful in their application they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$7,840.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 8, 2021

---

Residential Tenancy Branch