



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

On December 7, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms.

The Tenant attended the hearing. The Landlord attended the hearing as well, with A.G. attending the hearing as an agent for the Landlord, and H.G. attending later as a witness. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on December 14, 2020, and A.G. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, this evidence was accepted and considered when rendering this Decision.

The Tenant also advised that he submitted one picture to the Residential Tenancy Branch that was not served to the Landlord. As such, this one picture has been excluded and will not be considered when rendering this Decision.

A.G. advised that the Landlord's evidence was not served to the Tenant. As the Tenant was not served with the Landlord's evidence, this evidence was excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2018 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 31, 2020. Rent was established at \$900.00 per month and was due on the first day of each month. A security deposit of \$450.00 was also paid. A signed copy of the tenancy agreement was not submitted as documentary evidence.

All parties agreed that the Tenant was served with the Notice in person on September 1, 2020. The reasons the Landlord checked off on the Notice were because "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)" and that "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 Landlord indicated on the Notice that the effective end date of the tenancy was November 1, 2020.

The Tenant advised that the Landlord gave him this Notice because they wanted to occupy the rental unit for their own use. However, he lives down the street and has passed by many times. He submitted that the Landlord re-rented the entire house to a new tenant in approximately December 2020. He stated that he went to speak with the new tenant, who confirmed that the whole house has been rented. He did not submit any evidence to corroborate this claim, but he referenced a picture submitted that shows a vehicle parked in the driveway that is not the Landlord’s.

A.G. advised that there are three units on the property: the top floor, the basement, and the coach house. She stated that the top floor and the coach house were being rented since December 1, 2020. However, the Landlord’s son, who is also an owner of the property, moved into the basement rental unit in November 2020. She stated that it was the Landlord’s intention for her son to occupy the whole house, but he could not afford the mortgage, so he moved into the rental unit and rented the rest of the property. She testified that the Landlord mistakenly checked off the box that “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 Tenant advised that A.G. made contradictory testimony with respect to when the Landlord’s son moved in, he stated that the new tenant upstairs informed him that the rental unit was empty, and he submitted that the Landlord’s timeline of events is not accurate. He stated that he lives four doors away, that he frequently drives by to keep an eye on the rental unit, and that neither the Landlord nor the Landlord’s son live in the rental unit. He also stated that there was contradictory testimony provided with respect to the type of vehicle that was parked on the property that allegedly belonged to the Landlord’s son.

A.G. advised that it was the Landlord’s original intention to sell the home they are currently living in and occupy the entire property that the rental unit is on. However, their plans changed to allow the Landlord’s son to manage the property. As he was unable to afford the mortgage by himself, the son moved into the rental unit and the rest of the property was then rented.

H.G. confirmed that he was unable to afford the mortgage himself, so he rented out the rest of the property and moved into the rental unit slowly on December 7 or 8, 2020.

Documentary evidence was submitted to confirm that his personal property was in the rental unit. He stated that he is a long-haul truck driver and is away for long periods of time, so he would not often be in the rental unit. In addition, after some long trips, he would sometimes sleep in the yard at work as he would be too tired to drive home. He also stated that the door to the rental unit is not visible from the street so it would be difficult to observe if he did not or did not live there. It should be noted that at the start of his testimony, H.G. was seemingly aggressive and unnecessarily belligerent when providing submissions. In addition, he provided irrelevant information that was not pertinent to this Application and was thus not documented in this Decision.

The Tenant submitted that the submissions provided from the Landlord's side are contradictory and not consistent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit, or if all of the conditions on which the sale of the rental unit have been satisfied and the purchaser asks the Landlord, in writing, to give the Notice to end the tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

As the Landlord has checked off conflicting reasons for service of the Notice, the first issue I must consider is the validity of the Notice. I find it important to note that page two of the Notice states "Reason for this Two Month's Notice to End Tenancy (check the box that applies)". From this, I can reasonably infer that only one box is intended to be selected. Given A.G.'s testimony that the Landlord mistakenly checked off the box regarding the conditions of the sale, and given that both parties made submissions with respect to the issue of the Landlord or Landlord's close family member not moving into the rental unit, I am satisfied that both parties understood that the reason the Notice

was served was because “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).” Thus, pursuant to Section 68 of the *Act*, I have amended the Notice to reflect that this was the sole reason the Notice was served.

With respect to the Tenant’s claim for twelve-months’ compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated September 1, 2020 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

At the time the Notice was served, the Landlord advised that the intention was to have her, or a close family member, move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

I understand the Tenant’s concerns with respect to his doubts that the Landlord, or a close family member, did not use the property for the stated purpose; however, the reason for the Notice was that the Landlord or close family member would occupy the rental unit. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When reviewing the totality of the evidence before me, as the burden of proof is on the Tenant to prove this claim, I find that he has provided very little evidence, none of which was entirely compelling or persuasive, to support his testimony that the Landlord, or a close family member, did not occupy the rental unit within a reasonable period of time after the effective date of the Notice.

As I am not satisfied that the Tenant proved his claim on a balance of probabilities, I find that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. I dismiss his claim on this issue in its entirety.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: April 1, 2021

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Residential Tenancy Branch